

TOP 20 NLRB Cases from January 1, 2010 to December 31, 2015

Region	Primary Case Number	Primary Case Name	Action	Closed Date	Remedy Type	Fees, Dues, Fines, Reimbursements	Amount Paid by Company	Discriminatees Accepting Reinstatement	Discriminatees Refusing Reinstatement
09	09-CA-042057	MASSEY ENERGY COMPANY AND ITS SUBSIDIARY, SPARTAN MINING COMPANY D/B/A MAMMOTH COAL COMPANY	Compliance Investigation	12/18/2014	Backpay and EE Reinstatement	\$0.00	\$22,792,515.00	0	85
08	08-CA-039102	Alcoa Inc.	Withdrawal	9/9/2015	Backpay and EE Reinstatement	\$0.00	\$9,802,007.00	1	0
07	07-CA-051428	Douglas Autotech Corporation	Compliance Investigation	4/14/2015	Backpay and EE Reinstatement	\$0.00	\$8,000,000.00	35	0
32	32-CA-023902	Lawrence Livermore National Security, LLC	Compliance Investigation	6/27/2013	Backpay and EE Reinstatement	\$0.00	\$2,600,000.00	0	9
29	29-CA-030495	Renaissance Equity Holdings LLC & Renaissance Equity Holding LLCs A through G d/b/a Flatbush Gardens	Withdrawal	9/10/2012	Backpay and EE Reinstatement	\$0.00	\$1,051,700.00	69	0
05	05-CA-034837	Air Line Pilots Association, International	Settlement	2/17/2012	Backpay and EE Reinstatement	\$0.00	\$2,750,000.00	4	8
21	21-CA-039296	Kaiser Foundation Hospitals; Southern California Permanente Medical Group; Kaiser Foundation Health	Compliance Investigation	6/3/2013	Backpay and EE Reinstatement	\$0.00	\$2,929,302.79	0	0
17	14-CA-142836	VendTech-SGI, LLC	Withdrawal	6/25/2015	Backpay and EE Reinstatement	\$0.00	\$2,749,427.20	0	0
19	19-CA-114006	Churgach Federal Solutions, Inc., a Single Employer	Withdrawal	9/22/2014	Backpay and EE Reinstatement	\$0.00	\$2,650,000.00	0	0
10	10-CA-037271	NTN Bower Corporation	Compliance Agreement	6/27/2014	Backpay and EE Reinstatement	\$0.00	\$1,850,000.00	41	72
27	27-CA-101178	Energy West Mining Company	Withdrawal	2/17/2015	Backpay and EE Reinstatement	\$0.00	\$2,500,000.00	0	0
14	14-CA-064441	Big Ridge, Inc.	Withdrawal	2/7/2013	Backpay and EE Reinstatement	\$0.00	\$2,466,500.00	0	0
14	14-CA-119699	Tri County Coal, LLC & Springfield Coal Company, a single employer, joint employer or alter egos	Withdrawal	2/19/2014	Backpay and EE Reinstatement	\$0.00	\$1,184,000.00	0	0
29	29-CA-135742	FC + Skanska Modular, LLC	Withdrawal	11/25/2014	Backpay and EE Reinstatement	\$0.00	\$1,240,000.00	155	0
14	14-CA-097309	YP Holdings, Inc.	Withdrawal	2/19/2013	Backpay and EE Reinstatement	\$0.00	\$2,090,000.00	0	0
13	13-CA-046757	Titan Tire Corporation; Titan Tire Corporation of Freeport; Titan Tire Corporation of Bryan	Withdrawal	5/3/2013	Backpay and EE Reinstatement	\$0.00	\$2,023,941.00	0	0
10	10-CA-118588	International Paper	Withdrawal	1/21/2014	Backpay and EE Reinstatement	\$0.00	\$2,000,000.00	0	0
37	37-CA-007311	HTH Corporation, Pacific Beach Corporation, and Koa Management LLC, a Single Employer, d/b/a Pacific	Compliance Investigation	2/28/2014	Backpay and EE Reinstatement	\$0.00	\$1,582,810.00	0	0
05	05-CA-145723	Coastal International Security	Withdrawal	4/30/2015	Backpay and EE Reinstatement	\$0.00	\$1,907,820.98	0	0
04	04-CA-034752	United States Postal Service, AFL-CIO (Phila.)	Withdrawal	6/28/2013	Backpay and EE Reinstatement	\$0.00	\$1,875,000.00	0	0

National Labor Relations Board

FY
2018

Performance and Accountability Report

Protecting Democracy in the
Workplace Since 1935



How this Report Is Organized

This Performance and Accountability Report (PAR) consists of the following sections:

The Management's Discussion and Analysis (MD&A) Section provides an overview of our mission, organization, mission-related goals, performance and financial system highlights as well as the National Labor Relations Board's (NLRB's) operational and casehandling highlights for FY 2018. The MD&A also contains an analysis of financial statements and a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act (FMFIA).

The Performance Section compares the NLRB's performance to its strategic goals as set forth in the FY 2018 to FY 2022 Strategic Plan. The Strategic Plan includes two mission-related goals and two support goals to help achieve the Agency's mission and vision. The performance measures associated with the mission-related goals are outcome-based. The Agency has several outcome-based performance measures for the support goals combined with those that are management strategy driven to ensure alignment with the mission and needs of the customer.

The Financial Section is composed of the NLRB's financial statements, their related footnotes, and the Independent Auditors' Report.

Other Information provides the Top Management and Performance Challenges identified by the Inspector General in this fiscal year, and the NLRB's summary of audit and management assurances which details the Agency's review of compliance with the Improper Payments Elimination and Recovery Improvement Act (IPERIA). For an update on the Board's progress in addressing management and performance challenges from FY 2017 please see <https://www.nlrb.gov/reports-guidance/reports/oig-semiannual-reports>

Appendix A lists the acronyms cited throughout this report, Appendix B is a glossary of terms cited throughout this report, Appendix C presents historical performance data and Appendix D represents the complete strategic goal structure.

An electronic version of the NLRB FY 2018 Performance and Accountability Report is available on the NLRB's website at www.nlrb.gov.

The NLRB's Strategic Plan is also available at this website along with graphs and data which reflect the NLRB's work.

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Message From The Chairman

It is a great privilege to serve as the Chairman of the National Labor Relations Board. Although I have only been on the job for six months, I have been impressed with the dedication and professionalism of the people who I work alongside at the Agency. The NLRB has a long and proud history, and I am committed to our Agency's important mission.

The NLRB is a small but critically important Agency to our nation and economy. Established in 1935, the NLRB administers and enforces the National Labor Relations Act (NLRA), which is the primary federal statute governing labor relations in the private sector. With the principal purpose of promoting labor-management stability in order to avoid disruption in the economy, the NLRA serves a critical role today in labor-management relations across the country.

What we do at the NLRB affects the way employees work to support their families as well as how people run their businesses. Protection of workers' rights is at the heart of the Act we enforce. At the same time, our country's labor policies must foster a climate in which businesses are encouraged to invest in the creation of good and secure jobs for those very workers this Agency is here to protect. It is vital that we have understandable and predictable labor laws that balance the protection of those rights with the promotion of job creation and employment security.

We look forward to enhancing the value of the NLRB. Our Agency should operate as effectively and efficiently as possible. Among other things, I am committed to finding ways to improve our casehandling processes to resolve labor-management relations disputes and decide cases more expeditiously. The NLRB must also maintain an environment that inspires engagement from every employee. To achieve this, we must do everything possible to ensure that Agency employees have the resources, support, and training they need to succeed.

I am pleased to submit the Performance and Accountability Report for Fiscal Year 2018. This annual report provides insight into the finances and activities of the NLRB. Contained in this document are the NLRB's audited financial statements and performance information related to the goals set forth in the Agency's Strategic Plan.

As Chairman, I certify that the NLRB's internal controls and financial systems meet and conform to the requirements of the Federal Managers' Financial Integrity Act, and I have made every effort to verify the accuracy and completeness of the financial and performance data presented in this report. A more detailed discussion of the Agency's internal controls can be found starting on page 33 of this report.




John F. Ring
Chairman



NATIONAL
LABOR
RELATIONS
BOARD

Board Members

From Left to Right:

Chairman John F. Ring

Board Member Lauren McFerran

Board Member William J. Emanuel

Board Member Marvin E. Kaplan



Message From The General Counsel



For more than eighty years, the National Labor Relations Act has protected the right of private-sector employees to choose for themselves whether or not to bargain with their employers by direct collective action or through representatives designated by

them. The Board, through our Agency's unfair labor practice and representation case proceedings, ensures that employees may exercise their choices without unlawful interference; that reasonable rules and limits of collective bargaining are followed by employers and unions alike; and that where any question concerning representation exists, employees may vote freely and confidentially, in a secret-ballot election conducted by the Board.

As General Counsel of the Board, I am responsible for the oversight and prosecution of unfair labor practice charges brought before the Agency, as well as the processing of representation case petitions filed with one of our 26 Regional and 23 satellite offices nationwide. My Office also exercises general supervisory authority over the Agency's dedicated field staff of approximately 1,000 employees, as well as hundreds of hard-working employees assigned to one of the Headquarters

components responsible for various operational, casehandling, administrative and personnel functions.

It has been my privilege to return to the Board this time to serve in the capacity of General Counsel since November 17, 2017, and I am pleased to provide this report of the Agency's case accomplishments, improved efficiency of operations and management of resources as well as some of the collaborative and other efforts that are expected to yield future progress for our Agency and the Office of the General Counsel.

Casehandling

As General Counsel, I remain focused on the core mission of the Agency: protecting employee rights by ensuring that unfair labor practice charges and representation petitions are investigated in a timely manner consistent with the purposes and policies set forth in the Act. For that reason, shortly after my tenure began as General Counsel I issued GC Memorandum 18-02. The primary purpose of GC 18-02 was to assure practitioners, the public and Agency employees that I would look to apply extant law in exercising my prosecutorial discretion, even where I did not agree with the existing Board case law. GC 18-02 also identified several of the more recent decisions of the Board that had featured vigorous disagreement among members and seemed likely for review, if the disputed issues were again to come before the Agency. Such issues included the possibility of returning to the previously well-established standards that the Board had applied to review of certain settlement agreements (*Independent Stave*); reevaluating the rules applicable to review of employer handbooks and policies that had been adopted by a divided Board in *Lutheran Heritage*; reestablishing the Board's previously long-held

view that an employer's actions in conformity with its past practice did not represent an actionable change in conditions of employment (*E.I. du Pont de Nemours*); and examining whether to return to the "community of interest" test that the Board for 70 years had applied to issues related to appropriateness of bargaining units (*Specialty Healthcare*). In each of these areas, and others, I asked our staff to send relevant cases to our Division of Advice, and to assist them by providing their best analyses of the case issues.

Similarly, in GC 18-02 I determined not to follow a number of initiatives of my predecessors. These included several set forth in General Counsel or Operations memorandums, as well as initiatives set out in Advice memoranda. These initiatives included seeking: 1) to extend *Purple Communications* to other electronic systems (e.g., internet, phones, instant messaging); 2) to overturn the Board's *Tri-cast* doctrine regarding the legality of employer statements to employees, during organizing campaigns, that they will not be able to discuss matters directly with management if they select union representation; 3) to overturn *Oil Capitol* and put the burden of proof on respondent employers to demonstrate that a union salt would not have remained with the employer for the duration of the claimed backpay period; 4) to create a new unfair labor practice that an employer's misclassification of employees as independent contractors, in and of itself, should violate Section 8(a)(1); and 5) to overturn *IBM* and apply *Weingarten* in non-union settings. In each of the latter areas I thought Agency resources would be better spent enforcing existing law rather than trying to develop new unfair labor practices in areas that had implicitly or explicitly been rejected by the Board for 80 years.

Shortly after GC 18-02 issued, as predicted in that memorandum, the Board chose to reexamine and overrule several new cases, including those dealing with employer handbook and other rules (*The Boeing Co.*); community of interest standards (*PCC Structural*s); alleged failures to bargain deriving from an employer's adherence to past practice (*Raytheon Network*); and the standards that should apply to certain settlement agreements coming before the Board (*UPMC*).

When McDonald's USA and some of its franchisees asked to discuss settlement of extensive litigation which had begun in 2012, I agreed to have the Region involved enter into a dialogue with those entities and the Charging Party unions to remedy the alleged violations through settlement. Consistent with the latter decision, I determined that it would be in the best interests of employees affected by the employer's actions — who received a "make whole" remedy — and would plainly effectuate the purposes and policies of the Act, to accept and support a settlement agreement of a case that had consumed extensive Agency time and resources and would require extensive resources going forward. That settlement was then rejected by the Administrative Law Judge and is on special appeal with the Board. In addition, following the Board's decision in *The Boeing Co.*, my Office issued a memorandum (GC 18-04) providing guidance to the field offices as to interpretation, categorization and legality of various employer handbook rules under the Board's new interpretation.

Another area receiving attention from my Office was the difficult question of employee protected, concerted activity and the limits of workplace speech related to

terms and conditions of employment. Through our Division of Advice, the OGC addressed and found in *Google, Inc.* (Advice Memo. 32-CA-205351 (January 16, 2018)), that certain comments disparaging of female employees and disruptive in the workplace did not warrant protection under the Act. In a related vein, my Office has now renewed dormant discussions with the Equal Employment Opportunity Commission (EEOC) over a possible interagency understanding and memorandum of guidance to assist employees, unions and employers in dealing with workplace rights, obligations, issues and investigations that implicate both Title VII of the Civil Rights Act and the NLRA.

Also during this year, I recognized inconsistencies and interpretive differences deriving from field office application of Board and Supreme Court law bearing on a union's duty of fair representation (DFR) to its members and unit employees. These DFR cases arise frequently before the Agency and include a variety of factual patterns including questions related to requests for information, grievance processing, hiring hall operations, dues and fees collection and assessment, etc. After gaining a better understanding of how our offices were handling these cases, I asked our Division of Operations-Management to issue an internal memorandum to assist the field offices in reaching a more uniform application of the relevant legal principles.

In my first year as General Counsel, I have continued to rely on Section 10(j) as an important tool for effective enforcement of the Act. In GC Memorandum 18-05, I reaffirmed the position of my predecessor General Counsels that injunctive relief was an important tool in preserving the Board's ability to remedy certain unfair labor practices. The Office of the General Counsel sent 22 requests to the Board in this fiscal year, and the Board authorized, at least in part, 20 of them, with one case still pending before the Board. Of the 15 requests sent

during my tenure, 14 were authorized by the Board, with one case still pending.

In addition to litigation before the Agency itself, the Office of the General Counsel was involved in litigation before the Supreme Court, as reported in the FY 2017 PAR. In May 2018, the Court decided the *Murphy Oil* case adversely to the Agency, finding that an employer could lawfully require an individual employee to sign an arbitration agreement containing a waiver of the right to litigate work-related claims on a joint, collective or class basis. At the time of the Supreme Court's opinion, the Agency had approximately 150 cases pending in various stages of completion. Working with the Division of Enforcement Litigation and other Divisions within the Agency, the Office of the General Counsel diligently analyzed the Court's holding and applied it to each of the cases pending before the Office, in order to comply fully with the Court's position while also protecting the rights of the parties to address other issues not directly decided by the case.

As we close the first fiscal year in which I have served as General Counsel, I am pleased to say that our Office has realized case processing and decision making that is faithful to the Act, fair to the interests of the parties coming before the Agency, and protective of employee free choice as to all of the issues that may arise in the context of the modern workplace.

Administration

Following the Agency's relocation to its new Headquarters at Half Street, it continued to review its footprint and resource utilization in an effort to realize further efficiencies. I am pleased to say that both in Headquarters and in the field, the staff of the General Counsel are better connected today across data, voice, video and wireless communication than at any time in the Agency's history. Through NxGen, which was

migrated to the cloud during this fiscal year, as well as continuing implementation of web-based systems for employee real-time communication, performance evaluation, timekeeping, scheduling, awards, and related human capital functions, the Agency is approaching high levels of efficiency in case and administrative processing that bode well for its continued productivity. Advanced teleconferencing capabilities has enabled the Office of the General Counsel to better communicate with Agency personnel as well as the public.

Financial Matters

At the time of my appointment as General Counsel, the Agency was funded by successive Continuing Resolutions that required careful attention to budgetary issues. As General Counsel Griffin had reported last year, the Agency remained under a directive from the Office of Management and Budget (OMB) that it consider ways to be leaner and more efficient in our operations. I am pleased to say that, working with the Office of the Chief Financial Officer, and following the recommendations that had been made by Mr. Griffin, former Chairman Miscimarra, as well as the recommendations of an Agency-wide Task Force, the Agency was able to plan and position itself to meet budgetary constraints while remaining efficient in its structure, operations, functions and processes. Through the further planning and implementation of an early retirement and incentive offering to employees, the Agency better positioned itself to make future additions and adjustments to its Headquarters and Field Office staffing, thereby improving any staffing imbalances that may continue to exist.

Interagency Cooperation And Outreach

As noted above, my Office has reestablished its outreach activities with the EEOC and it continues its important intergovernmental relationships with components of the Department of Labor, Office of Homeland Security, and

a variety of other government and private organizations concerned with labor law matters. In addition, through our dedicated Headquarters and Field Office personnel, we regularly conduct educational outreach efforts designed to inform employees, unions, small business and other Agency stakeholders of the rights and obligations deriving from our Act, and where and how they may file charges or petitions seeking to invoke the assistance of our Agency. Through our continued enhancement of electronic capabilities, including our NLRB App., the Agency has made its services and resources available around the clock, so that employees and others may access information and case processing functions when most convenient to them.

Conclusion

In closing the first fiscal year in which I have served as General Counsel of the Agency, I am proud of the hard work of our dedicated staff and similarly proud to say that we are well positioned for success in the coming years. I look forward to reporting on these matters in the future and to building on the Agency's legacy of successful performance of its mission.



Peter B. Robb
General Council

2018 Year In Review

Agency Operations

Board Proposes Rule to Change its Joint-Employer Standard

On September 14, 2018 the NLRB published a Notice of Proposed Rulemaking in the Federal Register regarding its joint-employer standard. Under the proposed rule, an employer may be found to be a joint-employer of another employer's employees only if it possesses and exercises substantial, direct and immediate control over the essential terms and conditions of employment and has done so in a manner that is not limited and routine. Indirect influence and contractual reservations of authority would no longer be sufficient to establish a joint-employer relationship.

A majority of the Board believes that rulemaking in this important area of the law would foster predictability, consistency and stability in the determination of joint-employer status. The proposed rule reflects the Board majority's initial view, subject to potential revision in response to public comments, that the NLRA's intent is best supported by a joint-employer doctrine that does not draw third parties, who have not played an active role in deciding wages, benefits, or other essential terms and conditions of employment, into a collective-bargaining relationship for another employer's employees. The NLRB invited public comments on all aspects of the proposed rule within 60 days of the Notice's publication.

Board Overrules Specialty Healthcare, Eliminates "Overwhelming Community of Interest" Standard

In a 3-2 decision involving *PCC Structural, Inc.*, the NLRB overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011) (*Specialty Healthcare*), and reinstated the traditional community-of-interest standard for determining an appropriate bargaining unit in union representation cases. The NLRA provides that the Board must decide in each case whether the group of employees a union seeks to represent constitutes a unit that is "appropriate" for collective bargaining.

Under *Specialty Healthcare*, if a union petitioned for an election among a particular group of employees, those employees shared a community of interest among themselves, and the employer took the position that the smallest appropriate unit had to include employees excluded from the proposed unit, the Board would not find the petitioned-for unit inappropriate unless the employer proved that the excluded employees shared an "overwhelming" community of interest with the petitioned-for group.

The Board has now rejected the "overwhelming" community-of-interest standard. In the decision, the Board majority stated that "there are sound policy reasons for returning to the traditional community-of-interest standard that the Board has applied throughout most of its history, which permits the Board to evaluate the interests of all employees—both those within and those outside the petitioned-for unit—without regard to whether these groups share an 'overwhelming' community of interests."

NLRB Establishes New Standard Governing Workplace Policies, and Upholds No-Camera Policy in Boeing

In a 3-2 decision involving The Boeing Company, the NLRB overruled *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), which articulated the Board's previous standard governing whether facially neutral workplace rules, policies and employee handbook provisions unlawfully interfere with the exercise of rights protected by the NLRA.

Under the prior *Lutheran Heritage* standard, the Board found that employers violated the NLRA by maintaining workplace rules that do not explicitly prohibit protected activities, were not adopted in response to such activities, and were not applied to restrict such activities if the rules would be "reasonably construed" by an employee to prohibit the exercise of NLRA rights.

In place of the *Lutheran Heritage* "reasonably construe" standard, the Board established a new test: when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule.

The Board also announced that, prospectively, three categories of rules will be delineated to provide greater clarity and certainty to employees, employers, and unions.

› **Category 1** includes rules that the Board designates as lawful to maintain, either because (i) the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of NLRA rights; or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. Examples of Category 1 rules are the no-camera requirement

maintained by The Boeing Company, and rules requiring employees to abide by basic standards of civility. Thus, the Board overruled past cases in which the Board held that employers violated the NLRA by maintaining rules requiring employees to foster "harmonious interactions and relationships" or to maintain basic standards of civility in the workplace.

› **Category 2** includes rules that warrant individualized scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, and if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications.

› **Category 3** includes rules that the Board will designate as unlawful to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule. An example would be a rule that prohibits employees from discussing wages or benefits with one another.

Although the maintenance of particular rules may be lawful, the Board held that the application of such rules to employees who have engaged in NLRA-protected conduct may violate the Act, depending on the particular circumstances presented in a given case.

Applying the new standard, the Board concluded that *The Boeing Company* lawfully maintained a no-camera rule that prohibited employees from using camera-enabled devices to capture images or video without a valid business need and an approved camera permit. The Board majority reasoned that the rule potentially affected the exercise of NLRA rights, but that the impact was comparatively slight and was outweighed by important justifications, including national security concerns.

In the months since issuance of the Board's decision in *The Boeing Company*, the Office of the General Counsel has applied the Board's balancing test to

the cases coming before the Agency. To assist the Regional Offices in this regard, the General Counsel in June 2018 issued GC Memorandum 18-04. The memorandum contains general guidance for Regions regarding the placement of various types of rules into the three categories set out in *The Boeing Company*, and regarding the Section 7 interests, business justifications, and other considerations that Regions should take into account in assessing whether specific Category 2 rules should be regarded as lawful or unlawful under the Act.

Board invites public input on its Representation Election Regulations

On December 14, 2017, the NLRB published a Request for Information in the Federal Register, asking for public input regarding the Board's 2014 Election Rule, which modified the Board's representation-election procedures located at 29 CFR parts 101 and 102. The Board sought information from interested parties regarding three questions:

1. Should the 2014 Election Rule be retained without change?
2. Should the 2014 Election Rule be retained with modifications? If so, what should be modified?
3. Should the 2014 Election Rule be rescinded? If so, should the Board revert to the Representation Election Regulations that were in effect prior to the 2014 Election Rule's adoption, or should the Board make changes to the prior Representation Election Regulations? If the Board should make changes to the prior Representation Election Regulations, what should be changed?

Alternative Dispute Resolution Program Pilot

In July 2018 the NLRB launched a pilot program to enhance the use of its Alternative Dispute Resolution (ADR) program. The new pilot program will increase participation opportunities for parties in the ADR program and help to facilitate mutually-satisfactory

settlements. Since 2005 the NLRB's ADR program has assisted parties in settling unfair labor practice (ULP) cases pending before the Board. Participation in the Board's ADR program is voluntary, and a party who enters into settlement discussions under the program may withdraw its participation at any time.

Under the pilot, the Board's Office of the Executive Secretary will proactively engage parties with cases pending before the Board to determine whether their cases are appropriate for inclusion in the ADR program. Additionally, parties may also contact the Office of the Executive Secretary to request that their case be placed in the ADR program. No fees or expenses are charged to the parties for using the program.

The ADR program can provide parties with more creative, flexible, and customized settlements of their disputes by allowing parties greater control over the outcome of their cases. In addition to savings in time and money, parties who use the ADR program can broaden their resolution options, making the program particularly useful for cases where traditional settlement negotiations have been unsuccessful.

Technology Advances

IT Strategic Roadmap

The Office of the Chief Information Officer (OCIO) strategy for FY 2018 and FY 2019 concentrates on modernizing/consolidating the infrastructure and foundation to support mission critical business systems and enhancing current operations. In FY 2018, the OCIO made significant strides in advancing technologies in the areas of consolidating on-premise data centers, improving security posture, and advancing legacy applications to cloud technologies and services. The OCIO established a comprehensive roadmap to achieve OMB Memorandum M-16-19 initiatives for data center optimization. The OCIO established guidelines, metrics and milestones in the following areas:

- › Organization and Communications
- › Streamlining the Environment
- › Enterprise Data Center Discovery
- › Agency Data Center Optimization Plan Formulation
- › Detailed Discovery
- › Application and Server Migration
- › System Decommissioning
- › Data Center Closures

In the months from January 2018 thru July 2018, the OCIO team successfully executed on the plan and developed a blueprint for infrastructure and application migration to the cloud. In August 2018, key components of the Agency's NxGen enterprise-wide electronic case management system was moved from on-premises to the cloud, marking another technology milestone for the NLRB. The OCIO was able to transition the NxGen system to the cloud in six days. The original planned timeframe was aiming for completion in May 2019, but the OCIO was able to vastly accelerate the transition.

Major milestones in FY 2018:

- › Consolidated NLRB cloud services to Microsoft Azure. Closed Amazon Web Services (AWS) cloud services.
- › Migrated half of the Agency's mission critical enterprise electronic case management system, NxGen, production infrastructure to Microsoft Azure.
- › Migrated the Agency's backup data center, Waltham MA, infrastructure to Microsoft Azure. Rightsized the infrastructure in Azure.
- › Established Production Backup and Disaster Recovery operations in Microsoft Azure.
- › Closed the backup data center located in Waltham MA.

This Year in review provides a glimpse into the OCIO's strategic plan to navigate its transformation. The OCIO will continue to strengthen and evolve its "Cloud Smart" approach, which will enable it to serve and support the Agency's mission needs with right technology solutions.

PUBLIC INFORMATION PROGRAM

The Agency's Public Information Program is one of the critical services provided to the American public, including employers, unions, and employees. Under this program, in addition to the services provided by the Congressional and Public Affairs Office (CPAO) in Headquarters, Board agents in the field offices provide information directly to individuals or entities that contact the Agency seeking assistance. In FY 2018, the Agency's Regional Offices received 47,458 public inquiries regarding workplace issues. In responding to these inquiries, Board agents spend a considerable amount of time explaining the rights and responsibilities under the NLRA, accepting charges, or referring parties to other federal or state agencies as appropriate.

The public may also contact the Agency through a toll-free telephone service (1-866-667-NLRB) designed to provide easy and cost-free access to information. Callers hear messages recorded in English and Spanish that provide a general description of the Agency's mission, contact information for other government agencies and connections to the Regional Offices in closest geographic proximity to the caller. In FY 2018, the toll-free telephone service received 25,171 calls.

Public outreach is encouraged and has been embraced at all levels of the Agency. Over the past few years, the Board Members, General Counsels, Regional Managers, and board agents participated in numerous speaking engagements at events sponsored by law schools, the American Bar Association, the U.S. Chamber of

Commerce, and various employer, union and worker advocacy groups. Agency representatives also engaged in outreach events involving other federal agencies, business organizations, workers' rights centers, human resources professional groups, and labor organizations to educate them on the NLRA and the role of the NLRB in impartially enforcing the Act. In addition, Regional Offices publish newsletters and participate in televised or radio public talk shows.

As part of the Agency's outreach to communities with limited English proficiency, in addition to the bilingual toll-free telephone service for inquiries, the NLRB employs language assistants and contracts with service providers whose job is to provide interpretation and translation services in various languages to assist our field office casehandling. The public website contains Agency publications about the NLRA and processes, which are translated into Spanish, Chinese, Creole, Korean, Russian, Somali and Vietnamese. The number of electronic document templates available in Spanish continues to increase and the database of translated representation case notices and ballots has expanded to include 31 languages. Also, an Agency film about representation case processing has been recorded for the benefit of the Spanish-speaking community. Finally, the Agency has teamed up with other federal agencies in conducting listening sessions among the Asian American and Pacific Islander community to educate them about the rights of workers and to listen to their concerns regarding treatment at their workplaces and confusion about the Agency's processes.

FY 2018 Statistical Highlights



The Board issued
329 DECISIONS
in contested cases:

243 ULP cases and
86 REPRESENTATION
cases.



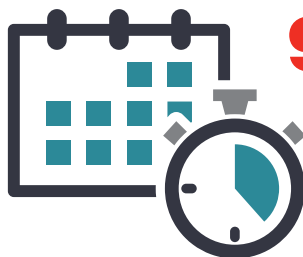
Regional Offices
prevailed in

88.0%

of Board and
administrative law judge
(ALJ) decisions which
were won, in whole or in
part.

89.1%

of Board decisions
reviewed by Appellate
Courts were enforced or
affirmed in whole or in
part.



98.2%

of all initial
elections were
conducted within
56 days
of filing the
petition.¹

Initial elections
in union
representation
cases were
conducted in a
median of 23 days
from the filing of
the petition.



Regional Offices
issued
1,088
complaints.



80.0%

of meritorious
ULP charges
resolved within
365 days.

\$54,340,370.70



was **recovered on behalf of employees**
as backpay or reimbursement of fees, dues,
and fines, and **1,270 employees** offered
reinstatement.

The Agency received

47,458 inquiries

through
its Public
Information
Program, and

25,171 calls
through its
toll-free number.



The Division of
Judges closed

146 hearings,
issued

150 decisions,
and achieved

449 settlements in cases on
its trial docket.

¹ The performance measure for Goal 2 found on page 32 measures the number of days required for the processing of petitions, and this statistic focuses on directed, stipulated or consent election cases.

Protecting Democracy in the Workplace Since 1935

01

Management's Discussion
And Analysis





MISSION STATEMENT

Protecting workplace democracy and the rights of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation's economy.

Employee Rights Under The NLRA

The NLRA extends rights to many private-sector employees, including the right to organize and to bargain collectively with their employer. Employees covered by the Act are protected from certain types of employer and union misconduct and have the right to support union representation in a workplace where none currently exists or to attempt to improve their wages and working conditions through other group action.

About the NLRB

The National Labor Relations Act

- ▶ Basic law governing relations between labor unions and business enterprises engaging in interstate commerce in the private sector
- ▶ Purpose – serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees
- ▶ Embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining and concerted activities to improve terms and conditions in the workplace
- ▶ Addresses the rights and obligations of employees, labor unions, and private employers

The National Labor Relations Board

The NLRB is an independent federal agency created in 1935 to administer and enforce the NLRA by conducting secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and by preventing and remedying statutorily defined ULPs by employers and unions.

The NLRB acts only on those cases brought before it and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, private employers, or other private parties.

Under the NLRA, employees have the right to:

- Form, or attempt to form, a union among the employees of an employer.
- Join a union whether the union is recognized by the employer or not.
- Assist a union in organizing employees.
- Engage in protected concerted activity. Generally, “protected concerted activity” is group activity that seeks to improve wages or working conditions in a particular workplace.
- Refuse to do any or all of these things. However, the union and employer, in a State where such agreements are permitted, may enter into a lawful union-security clause requiring employees to pay union dues and fees.

The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

In its 83-year history, the NLRB has counted millions of votes, investigated hundreds of thousands of charges, and issued thousands of decisions. These numbers tell an important part of the Agency’s story. Specific data on the following components of the Agency’s work can be found on the NLRB’s web site on: <https://www.nlr.gov>:

- › **Charges and Complaints** – Data related to charges of unfair labor practices received by Regional Offices and their disposition over time, including withdrawals, dismissals, complaints, and settlements
- › **Petitions and Elections** – Data related to petitions for representation, decertification, unit amendment

and clarification, and recession of union security agreements received by Regional Offices, elections held, and outcomes

- › **Decisions** – Data related to decisions by the Board and NLRB Administrative Law Judges
- › **Litigation** – Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions
- › **Remedies** – Data related to remedies obtained to resolve ULP, including backpay and offers of reinstatement

Statutory Structure

Agency leadership consists of six presidential appointees—five Board Members (including the Chairman) and the General Counsel. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the Board, and the General Counsel. The Board and the General Counsel maintain a Headquarters in Washington, D.C., and the Agency also maintains a network of Regional⁴ ("Field") offices and two satellite Judges' offices. The NLRA assigns separate and independent responsibilities to the Board and the General Counsel. The General Counsel's role is chiefly prosecutorial and the Board's is adjudicative. A map depicting the regional offices can be found at: <https://www.nlrb.gov/who-we-are/regional-offices>

The Five-Member Board

The five-member Board primarily acts as a quasi-judicial body, deciding cases based on formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate and serve staggered five-year terms⁵. The President designates one of the Board Members as Chairman. Board Member John F. Ring was designated as Chairman on April 12, 2018.

The Agency has had four Board Members since the term of Board Member Mark Gaston Pearce expired on August 27, 2018. Former Member Pearce has been nominated by the President for a third term as Board Member, but he has not yet been confirmed by the Senate.



⁴ Including Subregional and Resident Offices.

⁵ Even though Board Members have five-year-terms, a new five-year term begins running immediately upon the expiration of the previous Member's term and the seat remains vacant until an individual is nominated and confirmed by the Senate. Therefore, a significant lapse of time could occur between when a term expires and a new Board Member is confirmed, which means that a new Board Member might serve only a portion of a five-year term.

The General Counsel

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. The General Counsel is appointed by the President to a four-year term, with Senate consent, and is responsible for the investigation and prosecution of ULP cases and for the general supervision of the NLRB Regional Offices, as well as of the administrative, financial and human capital operations of the Agency. In performing delegated functions, and

in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board.

However, with respect to the investigation and prosecution of ULP cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Board. Peter B. Robb, was nominated by the President for General Counsel and appointed to a four-year term beginning on November 17, 2017.

Below is information about the terms of the current Presidential appointees of the NLRB.

John F. Ring Chairman	4/16/2018	12/16/2022
Lauren McFerran Member	12/17/2014	12/16/2019
Marvin E. Kaplan Member	8/10/2017	8/27/2020
William J. Emanuel Member	9/26/2017	8/27/2021
Peter B. Robb General Counsel	11/17/2017	11/1/2021

Organization



Casehandling Functions

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice regarding union representation and by preventing and remedying statutorily defined ULPs. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed under the NLRA by individuals, employers, or unions. In carrying out the NLRA's mandates, the NLRB supports the collective bargaining process and seeks to prevent and remedy certain ULPs on the part of employers and unions so as to promote commerce and strengthen the Nation's economy.

The two mission-related goals of the NLRB are:

- ▶ Promptly and fairly investigate, prosecute, and resolve unfair labor practice charges under the National Labor Relations Act
- ▶ Promptly and fairly resolve all questions concerning representation of employees

Unfair Labor Practice Proceedings

The NLRA regulates the conduct of labor-management relations between employers and unions. The NLRB enforces the provisions of the Act through ULP proceedings, which are adjudicated and remedied through procedures under the NLRA.

The General Counsel has sole responsibility— independent of the Board—to investigate charges of ULPs, and to decide whether to issue complaints

with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding the merits of ULP cases.

The General Counsel investigates ULP charges through the Agency's network of Regional, Subregional, and Resident Offices (collectively known as field offices). If there is reason to believe that a ULP charge has merit, the Regional Director, on behalf of the General Counsel, issues and prosecutes a complaint against the charged party, unless a settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an ALJ, who issues a decision. The decision may be appealed by any party to the Board through the filing of exceptions. The Board decides cases on the basis of the formal trial record, according to the statute and the body of case law that has been developed by the Board and the federal courts.

If the Board finds that a violation of the Act has been committed, the role of the General Counsel thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation. Although Board decisions and orders in ULP cases are final and binding with respect to the General Counsel, they are not self-enforcing. The statute provides that any party may seek review of the Board's decision in a United States Court of Appeals. In addition, if a party refuses to comply with a Board decision, the Board must petition for court enforcement of its order. In court proceedings to review or enforce Board decisions, the General Counsel represents the Board and acts as its attorney. Also, the General Counsel acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Sections 10(e) and (f) of

the NLRA after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Section 10(j) of the NLRA empowers the NLRB to petition a federal district court for an injunction to temporarily prevent ULPs by employers or unions and to restore the status quo, pending full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of ULP charges, in certain instances, would frustrate the Act's remedial objectives. In determining whether the use of Section 10(j) is appropriate in a particular case, the principal question is whether injunctive relief is necessary to preserve the Board's ability to effectively remedy the ULP alleged, and whether the alleged violator would otherwise reap the benefits of its violation.

Under NLRB procedures, after deciding to issue a ULP complaint, the General Counsel may request authorization from the Board to seek injunctive relief. The Board votes on the General Counsel's request and, if a majority votes to authorize injunctive proceedings, the General Counsel, through the Regional staff, files for injunctive relief with an appropriate federal district court. In addition, under Section 10(l) of the Act, when a Region's investigation of a charge yields reasonable cause to believe that a union has committed certain specified ULPs, such as a work stoppage or picketing with an unlawful secondary objective, the Regional Director is required, on behalf of the Board, to seek an injunction from a federal district court to halt the alleged unlawful activity.

Representation Proceedings

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial⁶. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer. Typically, the petitioner requests an election to determine whether a union has the support of a majority of the employees in an appropriate bargaining unit and therefore should be certified or decertified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and conduct a secret-ballot election, if appropriate, addressing challenges and objections to the election subsequently, and thereafter issuing a certification.

In the processing of representation cases, the Board and the General Counsel have shared responsibilities. The Regional Offices, which are under the day-to-day supervision of the General Counsel, process representation petitions and conduct elections on behalf of the Board based on a delegation of authority made in 1961. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. The Board has ultimate authority to determine such matters as the appropriateness of the bargaining unit and to rule on any challenges and objections to the conduct of an election. The Regional Directors have been delegated authority to render initial decisions in representation matters, which are subject to Board review.

⁶ Unlike ULP hearings where violations of the statute are litigated in an adversarial proceeding, representation case hearings are fact-finding proceedings regarding questions concerning representation.



Compliance Proceedings

To obtain compliance with the Board's orders and settlement agreements, the General Counsel's staff must follow up to ensure that the results of the processes discussed above are enforced. NLRB staff deals with employees whose rights have been violated to calculate backpay, and works with respondents regarding notice postings, reinstatement of workers, disciplinary record expungement, withdrawal of unlawful rules or policies, and bargaining remedies. Since Board orders are not self-enforcing, noncompliance or disputes on findings may require additional hearings or actions in the courts.

Administrative Functions

Section 3(d) of the Act assigns the General Counsel supervision over all attorneys employed by the Agency, with the exception of the ALJs, the Solicitor, the Executive Secretary and the attorneys who serve as counsel to the Board Members. The Board has also delegated to the General Counsel general supervision over the administrative, financial and personnel functions of the Agency.

Casehandling Highlights

The NLRB acts only on those cases brought before it and does not initiate cases. While charges must be filed with the Agency to begin an investigation, if merit is found to the charge allegations, the Regional Director has delegated authority from the General Counsel to issue complaint, absent settlement.

All proceedings originate with the filing of charges or petitions by employees, labor unions, or private-sector employers engaged in interstate commerce. During fiscal year 2018, the public filed 18,871 ULP charges of which 37.6 percent were found to have merit. Also, in FY 2018, the NLRB received 2,090 representation petitions, including 1,984 petitions to conduct secret-ballot elections in which workers in appropriate units select or reject unions to represent them in collective bargaining with their employers, as well as 37 petitions for elections

in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 7 petitions seeking amendment and 52 petitions seeking clarification of an existing bargaining unit, as well as 10 WH (wage & hour) cases.

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees' free choice on union representation and by preventing and remedying statutorily defined ULP. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

The cases on the following pages highlight this philosophy and reflect the NLRB's mission of protecting democracy in the workplace.



NLRB v. Murphy Oil USA, Inc., et al.**10-CA-038804, et al., reported at *Epic Systems Corp. v. Lewis*, 584 U.S. ___, 138 S.Ct. 1612 (2018).**

In a 5-4 decision in three consolidated cases decided under the name *Epic Systems Corp. v. Lewis*, the Supreme Court rejected the Board's position, announced in *D.R. Horton, Inc.*, 357 NLRB 2277 (2012), *enforcement denied in relevant part*, 737 F.3d 344 (5th Cir. 2013), that an employer violates Section 8(a)(1) by maintaining or enforcing a mandatory-arbitration agreement that does not allow its employees to file joint, class, or collective employment-related claims in any forum, arbitral or judicial. The Court, relying on the Federal Arbitration Act, held that arbitration agreements providing for individualized proceedings and waiving the right to participate in class or collective actions are lawful and must be enforced as written.

UPMC**06-CA-102465 et al., reported at 365 NLRB No. 153 (2017)**

The Board reinstated the authority of its ALJs—subject to Board review—to accept settlements over the objection of the General Counsel and the charging party based on the “reasonableness” factors set forth in *Independent Stave*, 287 NLRB 740 (1987). The Board overruled a case decided last year, *United States Postal Service*, 364 NLRB No. 116 (2016), where it had prohibited judges from accepting a respondent's proposed settlement terms over the objection of the General Counsel and charging party unless the order provided a full remedy for all the violations alleged in the complaint.

The case involved a complaint against UPMC and its subsidiary, Presbyterian Shadyside, based on ULPs that were allegedly committed by Presbyterian Shadyside.

There were no allegations or evidence that UPMC independently engaged in any alleged ULPs. The Board ruled that an ALJ properly dismissed a single-employer claim against UPMC, based on UPMC's offer to guarantee the performance by Presbyterian Shadyside of any remedial aspects of the Decision and Order which survived the exceptions and appeal process.

Chairman Miscimarra was joined by Members Kaplan and Emanuel in the majority opinion. Members Pearce and McFerran dissented in the case.

The Boeing Company**19-CA-090932 et al., reported at 365 NLRB No. 154 (2017)**

The Board overruled part of *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), and established a new test for evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights. In these cases, the Board will now evaluate (i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule. The Board will also classify workplace rules into three categories to provide greater clarity and certainty to employees, employers, and unions. *Category 1* will include rules that the Board designates as lawful to maintain, either because (i) the rule, when reasonably interpreted, does not prohibit or interfere with the exercise of NLRA rights; or (ii) the potential adverse impact on protected rights is outweighed by justifications associated with the rule. *Category 2* will include rules that warrant individualized scrutiny in each case as to whether the rule would prohibit or interfere with NLRA rights, and, if so, whether any adverse impact on NLRA-protected conduct is outweighed by legitimate justifications. *Category 3* will include rules that the



Board designates as unlawful to maintain because they would prohibit or limit NLRA-protected conduct, and the adverse impact on NLRA rights is not outweighed by justifications associated with the rule. The Board also overruled past cases to the extent they held that it violates the Act to maintain rules requiring employees to foster “harmonious interactions and relationships” or to maintain basic standards of civility in the workplace.

Under the prior *Lutheran Heritage* standard, the Board would find that employers violated the NLRA by maintaining workplace rules that employees would “reasonably construe” to prohibit the exercise of NLRA rights.

The case concerned a no-camera rule that the Board found could potentially affect the exercise of Section 7 rights, but which was nevertheless lawful because the impact was comparatively slight and outweighed by important justifications, including national security concerns.

Chairman Miscimarra was joined by Members Kaplan and Emanuel in the majority opinion. Members Pearce and McFerran dissented in the case.

PCC Structurals, Inc.

19-RC-202188, reported at 365 NLRB No. 160 (2017)

The Board overruled *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011),

and reinstated the traditional community-of-interest standard for determining an appropriate bargaining unit in union representation cases. Under *Specialty Healthcare*, if a union petitioned for an election among a particular group of employees, those employees shared a community of interest under traditional standards, and the employer took the position that the smallest appropriate unit had to include additional employees excluded from the proposed unit, the Board would find the petitioned-for unit appropriate unless the employer proved that the excluded employees shared an “overwhelming” community of interest with the petitioned-for group. The Board has now abandoned the “overwhelming” community-of-interest standard and returned to the traditional community-of-interest test, where the Board will assess whether employees in the proposed bargaining unit share interests that are sufficiently separate and distinct from those of the remainder of the workforce to constitute an appropriate unit for bargaining. The Board will consider whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have

distinct terms and conditions of employment; and are separately supervised.

The case was before the Board on an employer's request for review after the Regional Director found that a petitioned-for unit of approximately 100 welders was appropriate for collective bargaining under *Specialty Healthcare's* "overwhelming community of interest" standard. Expressing no opinion as to whether the petitioned-for unit was appropriate, the Board remanded the case to the Regional Director for further appropriate action consistent with its Order.

Chairman Miscimarra was joined by Board Members Kaplan and Emanuel in the majority opinion. Members Pearce and McFerran dissented in the case.

Raytheon Network Centric Systems

25-CA-092145, reported at 365 NLRB No. 161 (2017)

The Board overruled *E.I. du Pont de Nemours*, 364 NLRB No. 113 (2016) (*DuPont*), and reversed the ALJ's findings that the Respondent violated the NLRA by announcing and unilaterally implementing changes to employees' healthcare benefits. The Board found that the changes were a continuation of the Respondent's past practice involving similar unilateral changes. The Board held that DuPont was fundamentally flawed because it was inconsistent with Section 8(a)(5) of the Act, distorted the long-understood, common sense understanding of what constitutes a "change," and contradicted well-established Board and court precedent, including *NLRB v. Katz*, 369 U.S. 736 (1962). The Board stated that DuPont cannot be reconciled with its responsibility to foster stable bargaining relationships.

The Board stated that it was returning to a standard where actions do not constitute a change if they are similar in kind and degree with an established past practice consisting of comparable unilateral action. It further stated that this principle applies regardless of whether (i) a collective-bargaining agreement was in

effect when the past practice was created, or (ii) no collective-bargaining existed when the disputed actions were taken. The Board also ruled such actions do not constitute a change requiring bargaining merely because they involve some degree of discretion.

Chairman Miscimarra was joined by Board Members Kaplan and Emanuel in the majority opinion. Member Kaplan also wrote a concurring opinion. Members Pearce and McFerran dissented in the case.

WestRock Services, Inc.

10-CA-195617, reported at 366 NLRB No. 157 (2018)

In a 5-0 decision, the Board found that the Supreme Court's reasoning in *Lucia v. SEC*, 585 U.S. ___, 138 S.Ct. 2044 (2018), supports a determination that Board ALJs are inferior officers and therefore must be appointed in accordance with the Appointments Clause of the United States Constitution, i.e., by the President, the courts, or the Head of Department. However, unlike the Securities and Exchange Commission judges in *Lucia*, all Board ALJs are appointed by the full Board as the Head of Department, not by other Agency staff members. Thus, the Board concluded that their appointments satisfy constitutional requirements. The case involved an employer's motion to dismiss, which the Board denied. Chairman Ring, and Members Pearce, McFerran, Kaplan, and Emanuel participated.

Voices for Int'l Business and Education, Inc. d/b/a International High School of New Orleans

15-CA-182627, reported at 365 NLRB No. 66 (2017), 5th Cir. decided Sept. 21, 2018

The Fifth Circuit upheld the Board's determination that the Employer is not a "political subdivision" of the State of Louisiana, and thus not exempt from the Act's coverage.

The Board (Members Pearce and McFerran; Chairman Miscimarra, dissenting) denied the Employer's request

for review of the Regional Director's decision rejecting its assertion that it was expressly excluded from Section 2(2)'s definition of "employer" because it is a "political subdivision" of Louisiana. The Regional Director had applied the Board's political subdivision test, endorsed by the Supreme Court, which requires the entity seeking the exemption to establish that it was "(1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate." *NLRB v. Natural Gas Util. Distr. of Hawkins Cty.*, 402 U.S. 600 (1971).

On review, the court held that "the Board's definition is consistent with the common meaning of 'political

subdivision' of a state," and that "for both of the Board's definitions of political subdivision, ultimate authority over policymaking remains with the public." Here, the court stated, the Employer "lacks that political accountability." Among other considerations, the court noted that the high school's operators "are not controlled by the state," nor are they put in place or removed by state actors, and "there is no public mechanism for changing the [school's] policies." The court therefore agreed with the Board that the Employer is not administered by individuals responsible to public officials or to the general electorate. Therefore, the Court concluded, the Employer, "like most other privately controlled employers is subject to the National Labor Relations Act."



Performance Highlights

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives from the Board and the General Counsel worked together in developing the comprehensive Strategic Plan (FY18-FY22) and the Performance and Accountability Report.

The NLRB's Strategic Plan states the Agency's strategic goals, objectives, initiatives, performance measures, and management strategies. There are two mission-related goals, and two support goals. The majority of the support goals are management strategy based and will be discussed at length in the Performance Section of this report.

The NLRB's performance measurement system has been highly regarded for decades and modeled by other agencies to track case processing times. Most of the data collected tracks the time spent at each step of the case processing "pipeline." The Agency does not rely on outside sources for the data used in its performance management system. Each NLRB office is responsible for collecting and verifying performance measurement data. All the NLRB's mission-related offices have moved fully into the NxGen system, which provides for real-time review of all case file materials and consistent data reporting.

Data regarding mission-related goals are compiled using the Agency's NxGen Case Management system. This enterprise-wide electronic case management system is used by all divisions of Agency. Each division, including Headquarters and the Regions, has data integrity reports which help isolate and correct data errors. The Division of Operations-Management oversees the Regional offices which compile 75 percent of the case-related

statistics. Each quarter, Regions are required to run various data integrity reports in NxGen and report their findings to the Division of Operations-Management for review. For more information on the program evaluation please see page 62.

The NLRB's mission-related goals represent the core functions of the Agency in its enforcement of the NLRA. Rather than focus on individual segments of the casehandling process, the performance measures for these goals focus on the overall time it takes to process an entire case, from start to finish. The goals are outcome-based and aligned with the mission of the Agency. The NLRB tracks the total time taken to accomplish the following: the processing of all ULP charges, including all charges filed, the resolution of those ULP charges found to have merit, and charge allegations evidencing statutory violations; and the resolution of all questions concerning representation.

The Performance Measures for Strategic Goal 1 address the timely resolution of ULP cases, including time spent on the case by Field and Headquarters Offices. On an annual basis, there are typically more than six times as many ULP cases than representation cases. Both types of cases often involve complicated issues for Regions to address.

The Performance Measure for Strategic Goal 2 focuses on the time taken to resolve a representation case, from beginning to end, including time spent on the case by Field and Headquarters Offices. In representation cases, elections result from petitions filed by unions, employees, or employers seeking a secret ballot determination as to whether a majority of employees support union representation.

Goal 1 Performance Measure 1:

The percentage of all meritorious unfair labor practice charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

Year	Annual Goal	Actual Performance
FY 2014	82.5%	83.9%
FY 2015	82.5%	80.4%
FY 2016	82.6%	82.7%
FY 2017	82.7%	82.4%
FY 2018	82.8%	80.0%

Goal 1 Performance Measure 2:

The percentage of all unfair labor practice charges resolved by withdrawal, dismissal, settlement or compliance with a Board order or Court judgment within 120 days of the filing of the charge.

Year	Annual Goal	Actual Performance
FY 2014	72.3%	72.3%
FY 2015	72.3%	70.6%
FY 2016	72.4%	70.8%
FY 2017	72.4%	68.9%
FY 2018	72.5%	69.4%

Goal 2 Performance Measure:

The percentage of representation cases resolved within 100 days of filing the election petition.

Year	Annual Goal	Actual Performance
FY 2014	85.3%	88.1%
FY 2015	85.4%	87.1%
FY 2016	85.5%	87.6%
FY 2017	85.7%	89.9%
FY 2018	85.8%	88.8%

Financial And Systems Highlights

Operational/Performance Highlights

The Office of the Chief Financial Officer (OCFO), comprised of the Budget, Acquisitions and Finance Branches, reports directly to the Chairman and General Counsel. This structure integrates and enhances Agency financial management. Specifically, the OCFO focuses on effectiveness and efficiency in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations.

The OCFO continuously seeks to infuse more discipline, structure, and internal control in the financial management lifecycle and throughout the financial management process.

Below are some highlights from FY 2018 OCFO activities:

Charge Card Program

General Services Administration's (GSA's) SmartPay 3 program officially starts November 30, 2018. The NLRB Purchase and Travel Card programs are in process of being transitioned from the current program SmartPay 2 which is a huge undertaking for the OCFO. With the transition comes new training requirements, better oversight, as well as new policy with a heavy focus on working in a virtual environment. Currently cards for both programs are being manufactured and prepared for shipping.

Systems

The NLRB obtains the majority of its financial systems and services from the Department of the Interior's Interior Business Center (IBC) and has no plans to operate its own financial systems. NLRB is responsible for overseeing IBC and ensuring that financial systems

and internal controls are in place to fulfill legislated and regulatory financial management requirements. IBC provides the following systems:

- › Oracle Federal Financials (OFF) – Integrated system of record for all financial transactions.
- › Federal Payroll and Personnel System (FPPS) – Personnel system of record, which interfaces with the Oracle system.
- › E2Solutions – eTravel system provided by CWT Sato (Carlson Wagonlit), the NLRB's Travel Management Service, which also interfaces with the Oracle system.
- › IPP – A Web-based system that provides one integrated, secure system to simplify the management of vendor invoices. It is offered at no charge to federal agencies and their vendors. In 2018 the Agency began participating in a pilot with IBC. A few benefits of IPP are as follows:
 - IPP can help federal agencies avoid Prompt Payment penalties by supporting more efficient invoice processing while automating invoice collection, validation and approval workflows.
 - Vendors can manage their receivables more easily using one system to transact with multiple agencies.
 - IPP saves federal agencies and vendors time and money by automating formerly paper-based processes, and it is offered at no charge.
 - IPP improves financial management by promoting standard processes to manage government invoices with increased controls.
 - IPP is supported by the Treasury Department, which oversees all upgrades and enhancements.



Oracle Business Intelligence Enterprise Edition (OBIEE)

The NLRB is investing in a new query and reporting tool available from Oracle. The tool will replace Discoverer, which will soon no longer be supported. The Oracle Business Intelligence Application (OBIA) is a business intelligence suite, including ad hoc query and analysis, dashboards, enterprise reporting, mobile analytics, scorecards and predictive analytics, on an architecturally integrated business intelligence foundation. The central component of the suite is Oracle Business Intelligence Enterprise Edition (OBIEE), which features a Common Enterprise Information Model for centralized metadata management, common query request generation and data access. We anticipate that these products will provide us with the information to enable our Agency to drive innovation, optimize operations, and deliver more relevant and timely information to decision makers.

Analysis of Financial Statements

The NLRB prepares annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP) for federal government entities and subjects the statements to an independent audit

to ensure their integrity and reliability in assessing performance. The NLRB's financial statements summarize the financial activity and financial position of the Agency. The financial statements, footnotes, and the balance of the required supplementary information appear in the Financial Section of this Performance and Accountability Report.

Balance Sheet - The NLRB assets were \$50.2 million as of September 30, 2018. The Fund Balance with Treasury, which was \$43.4 million, represents the NLRB's largest asset at 86.5 percent. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years.

Property, Plant, and Equipment, which represents the NLRB's second largest asset at 12.1 percent, was \$6.1 million and was primarily related to leasehold improvements and internal use software development costs. This was a \$1.9 million decrease from the prior year due to fewer acquisitions while still incurring depreciation and amortization from existing property, plant, and equipment.

The NLRB liabilities were \$29.1 million as of September 30, 2018. Liabilities consist of amounts owed to vendors,

governmental trading partners, and Agency employees. Changes in Accounts Payable with both governmental trading partners – an increase of 4.4 percent – and vendors – an increase of 6.3 percent – was related to a more stringent contract monitoring, payment, and closeout process. Employee unfunded annual leave was 45.4 percent of liabilities, the NLRB's largest liability. The FECA Actuarial liability increased by \$1.8 million or 264 percent due an additional claimant.

Statement of Net Cost - The NLRB's appropriation is used to resolve representation cases or ULP charges filed by employees, employers, unions, and union members. Of the \$279.7 million net cost of operations in FY 2018, 90 percent was used to resolve ULP charges and 10 percent was used for representation case activities.

Statement of Changes in Net Position - The NLRB's net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2017 to FY 2018, there was a change in net position of \$8.3 million. This was, in part, due to a decrease in appropriations used during the year related to vendor contract services. There was also a decrease in imputed financing for employee benefits which was impacted by lowered staffing levels and cost factors for all pension plans.

Statement of Budgetary Resources - The Statement of Budgetary Resources shows budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2018, the NLRB had available budgetary resources of \$280.5 million, the majority, \$274.2 million,

were derived from new budget authority. Obligations were \$272.4 million for FY 2018, and total outlays for FY 2018 were \$261.7 million. The status of budgetary resources had a \$2.1 million increase in apportioned funds due to NLRB reserving funding for the Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP) buyout authority. The actual number of employees who took advantage of the buyout offer was lower than expected. The remainder of the funding could not be executed on other requirements before year end.

Limitations of Principal Financial Statements

The principal financial statements of the NLRB have been prepared to report the financial position and results of operations of the Agency, pursuant to the requirements of 31 U.S.C. 3515(b). While the statements have been prepared from the books and records of the entity in accordance with generally accepted accounting principles for federal entities and the formats prescribed by Office of Management and Budget, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

The statements should be read with an understanding that they are for a component of the U.S. Government, a sovereign entity.

Compliance with Laws and Management Assurances

Antideficiency Act (ADA)

The Antideficiency Act prohibits federal agencies from:

- ▶ making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law;
- ▶ involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law;
- ▶ accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property; and
- ▶ making obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by Agency regulations.

There were no known violations of the Anti-Deficiency Act during FY 2018 at the NLRB.

Debt Collection Improvement Act (DCIA)

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA) requires agencies to periodically adjust civil penalties for inflation if either the amount of the penalty or the maximum penalty is set by law. In addition, the President is required to report certain information to Congress either annually or every five years. The FCPIA was amended by the Debt Collection Improvement Act of 1996. The DCIA amended the FCPIA to require each federal agency to review and report annually on their internal standards and policies

regarding compromising, writing down, forgiving, or discharging debt. The Agency refers delinquent debts to the Treasury Offset Program (TOP).

Digital Accountability and Transparency Act (Data Act)

The DATA Act expands the Federal Funding Accountability and Transparency Act (FFATA) of 2006 to increase accountability and transparency in federal spending, making federal expenditure information more accessible to the public. The goal of the DATA Act is to make federal spending more accessible, searchable, and reliable so taxpayers have the opportunity to understand the impact of federal funding for federal programs/ entities.

As required by OMB Memorandum M-15-12, issued on May 8, 2015, the NLRB drafted a DATA Act of 2014 Implementation Plan in order to increase transparency of federal spending as required the DATA Act and FFATA Act.

The Acquisition Management Branch (AMB) inputs contract and Interagency Agreements (IAAs) directly into the Federal Procurement Data System - Next Generation (FPDS-NG). The number of contracts and IAAs are less than 50, which has made this a manageable workload for the staff.

The NLRB's service provider, IBC, has identified 47 of the required reportable data elements that will be provided for us to report from existing systems. The remaining elements are being analyzed by the NLRB.

The NLRB has already taken steps to identify the data information needed to be captured for reporting. The

FY 2017 Congressional Justification has restructured the five major Program Activities and established the unique award ID as the Oracle Financial system generated Purchase Order number. The NLRB also already submits object class and program activity data from the Oracle financial system to OMB and has done this since FY 2013.

Federal Information Security Management Act (FISMA)

The Federal Information Security Management Act of 2002, as amended by the federal Information Security Modernization Act of 2014, requires federal agencies to ensure adequate security protections for federal information systems and information. Under this act, federal agencies must submit annual FISMA reports to OMB.

Government Charge Card Abuse Prevention Act

On October 17, 2014 the President signed an Executive Order (EO) directing the federal government to establish and maintain safeguards and internal controls for the charge card program. The NLRB evaluated the charge card program as directed by the guidance provided in OMG Circular A-123 Appendix B, OMB Memorandum M-12-12 *Promoting Efficient Spending to Support Agency Operations*, and OMB Memorandum M-13-21 *Implementation of the Government Charge Card Abuse Prevention Act of 2012*. The effectiveness of the Agency's purchase card and travel card program was assessed through enhanced monitoring procedures to detect fraud, waste and abuse.

Improper Payments Information Act (IPIA)

The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012, requires agencies to review all programs and activities they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs. The NLRB's risk assessment indicated that the salaries and expenses program was not susceptible to significant improper payments. A detailed report of the NLRB's improper payments activities is presented in the Other Information section on page 111.

Prompt Payment Act

The Prompt Payment Act was enacted in 1982 to ensure the federal government makes timely payments. Bills are to be paid within 30 days after receipt and acceptance of material and/or services - or - after receipt of a proper invoice whichever is later. When payments are not made timely, interest is paid. The Agency made late payments resulting in interest penalties of \$2,574.55 in FY 2018.

Federal Managers' Financial Integrity Act (FMFIA)

The Federal Managers' Financial Integrity Act requires federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented

management, assess the adequacy of those internal controls, identify needed areas of improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems. The annual statement of assurance and management control over financial application controls and financial reporting submitted by the NLRB's service provider follows this section.

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. The NLRB is committed to management excellence and recognizes the importance of strong financial systems and an internal control system that promotes integrity, accountability, and reliability.

Internal control systems are expected to provide reasonable assurance that the following objectives are being achieved:

- » Effectiveness and efficiency of operations
- » Reliability of financial reporting
- » Compliance with applicable laws and regulations

In assessing whether these objectives are being achieved, the NLRB used the following standards in

accordance with OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, dated July 15, 2016.

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 31 designated managers on an Agency-wide basis. In completing this annual review, the designated managers, in conjunction with subordinate staff as needed, used personal judgment as well as other sources of information. These sources included: knowledge gained from day-to-day operations; Inspector General audits and investigations; program evaluations; reviews of financial systems; annual performance plans; and previous management reviews. The designated managers were responsible for conducting reviews of program operations, assisting program offices in identifying risks and conducting internal control reviews, issuing reports of findings, and making recommendations to improve internal controls and risk management.

Based on the internal controls program, reviews, and consideration of other information, senior management's assessment of the NLRB's internal controls is that controls are adequate to provide reasonable assurance in support of effective and

Control Environment	Creating and maintaining an organizational structure that promotes a high level of integrity and personal and professional standards, and sets a positive and supportive attitude toward internal controls through conscientious management
Risk Assessment	Identification and analysis of risks that could impede the achievement of Agency goals and objectives
Control Activities	Policies, procedures, techniques, and mechanisms to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results
Information and Communications	Ensures the Agency's control environment, risks, control activities, and performance results are communicated throughout the Agency
Monitoring	Assessing quality of performance over time to ensure that internal control processes are appropriate and effective

efficient operations, reliable financial reporting, and compliance with laws and regulations.

The Statement of Assurance provided on page 40 is required by the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Control*.

FMFIA Section 2, Management Control

Section 2 of the FMFIA requires federal agencies to report, based on annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2018 provide reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA.

FMFIA Section 4, Financial Management Systems

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2018 in accordance with the FMFIA and OMB Circular A-127, *Financial Management Systems*, Section 7 guidance. The NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the Department of Treasury. The Agency also reviews the SSAE-18's for all systems operated by IBC to ensure that independent auditors have also certified that the necessary controls are in place, so the NLRB can rely on those systems.





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC

October 5, 2018


ANNUAL STATEMENT OF ASSURANCE

Management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB assessed the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with Office of Management and Budget (OMB) Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, the NLRB can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2018 was operating effectively, and no material weaknesses were found in the design or operation of the internal controls.

In accordance with the requirements of OMB Circular No. A-123, Appendix A, the NLRB assessed the effectiveness of internal control over financial reporting, which includes internal control related to the preparation of the annual financial statements, safeguarding of assets, and compliance with applicable laws and regulations governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements. The result of this evaluation provides reasonable assurance that the NLRB's internal control over financial reporting was operating effectively as of September 30, 2018.

The NLRB also conducted reviews of financial management systems. Based on the results of these reviews, the NLRB can provide reasonable assurance that the financial management systems comply with the applicable provisions of the FMFIA as of September 30, 2018.


John F. Ring
Chairman


Peter B. Robb
General Counsel

Protecting Democracy in the Workplace Since 1935

02

Performance
Section



Program Performance

Performance Goals And Objectives

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two mission-related goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA as efficiently as possible and in a manner that gives full effect to the rights afforded to all parties under the Act. The two support goals further enable the Agency to accomplish its mission. Please see Appendix D for the list of performance measures for the support goals, as well as the management strategies for all the Agency goals.

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives of the Board and the General Counsel worked together in developing one comprehensive Strategic Plan and Performance and Accountability Report.



Measuring Performance

One of the NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. The Agency has two mission-related goals that emphasize individual segments of case processing to promote timely, efficient, and well-managed casehandling and two support goals that give a broader picture of how the Agency achieves its mission.

As to Agency success in bringing effective resolution to labor disputes in a timely manner, it should be noted that it is difficult for an agency, such as the NLRB, to measure "outcomes" in the sense intended by the authors of the Government Performance and Results Act (GPRA) and the Government Performance and Results Modernization Act (GPRAMA). In the representation case area, for instance, the Agency does not control or seek to influence the results of elections but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all the necessary requirements for conducting an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure that the Agency has established for the conducting of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees freely exercising their statutory rights as set out in the NLRA.

The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. While it is difficult to quantify by the number of ULPs, the Agency can quantify our commitment to resolve all disputes that are brought before us, and to provide a remedy and ensure that labor peace is maintained or restored. Noting that the Agency cannot *sua sponte* investigate the actions of an employer or labor union without a charge being filed, the NLRB established two performance measures. The timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case, are the focus of those performance measures.

The tables and narratives in this section show the proposed annual targets for performance measures and management strategies for the last five-years for the two mission-related goals. The actual results achieved for the mission-related goals for FYs 2009, 2010, 2011, 2012 and 2013 can be found in Appendix C.

This section also documents the performance regarding the support goals which are management strategy driven and presented in a summary format. The results achieved for the support goals in FY 2014, 2015, 2016 and 2017 can be found in Appendix C. These goals originated in FY 2014 and there is no historical data prior to that year.

Strategic Goal 1 (Mission):

Promptly and fairly investigate, prosecute, and resolve unfair labor practices under the National Labor Relations Act.

Objectives:

1. Achieve established performance measures for the resolution of unfair labor practice charges.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner

Measure: The percentage of all meritorious unfair labor practice charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

This measure focuses on meritorious (prosecutable) ULP cases, and the time taken to close them on compliance, including time spent on both the General Counsel and Board sides of the Agency. Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including reinstatement and the payment of backpay, to make whole those injured by the ULP.

Once a Regional Director has determined a ULP charge has merit, a complaint issues and, absent settlement, a complaint issues and the case is scheduled for a hearing before an ALJ. Settlement efforts continue throughout the course of the litigation. The vast majority of settlements are achieved before trial. Once the ALJ issues a decision, the decision can then be appealed to the Board. The Board, in turn, will consider the case and issue a final order resolving the ULP case. Ordinarily, the Regional Office will attempt to secure compliance in the 30-day period following the Board's order. If compliance

cannot be obtained, the Region will refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which typically proceeds to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board or a reviewing court, or in extreme cases, in contempt proceedings.

ULP cases are closed on compliance when the remedial actions ordered by the Board or agreed to by the party charged with the violation of the NLRA are complete. This measure includes all litigated cases, including those appealed to the U.S. Courts of Appeal.

In FY 2018, the NLRB closed 80.0 percent of all prosecutable ULP cases in 365 days from the docketing of the charge.

GOAL NO. 1, TABLE 1

Percentage of ULP Cases Closed on Compliance Within 365 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	82.5%	82.5%	82.6%	82.7%	82.8%
ACTUAL	83.9%	80.4%	82.7%	82.4%	80.0%
Counting of days: The 365 days is calculated from the date the charge is docketed.					

Measure: The percentage of all unfair labor practice charges resolved by withdrawal, dismissal, settlement or compliance with a Board order or Court judgment within 120 days of the filing of the charge.

This measure focuses on the time taken to resolve a ULP charge, including time spent on both the General Counsel and the Board sides of the Agency.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates it for merit and decides whether to issue a complaint. If a charge is found to have no merit, which occurs in about 2/3 of the cases, it is dismissed if the charging party does not withdraw it. A dismissal can be appealed to the General Counsel. If a charge is found to have merit, a complaint issues, unless a settlement agreement is reached. If a case is

not settled but instead is fully litigated before an ALJ, the Board will issue an order, which may be enforced or appealed to the US Court of Appeals.

A ULP case is resolved and closed when it has been completely processed, such that the charge allegations are investigated, and, where appropriate, remedied and there is no further action to be taken by the Agency.

In FY 2018, the NLRB closed 69.4 percent of all ULP cases within 120 days of the docketing of the charge.



GOAL NO. 1, TABLE 2

Percentage of ULP Charges Resolved Within 120 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	72.3%	72.3%	72.4%	72.4%	72.5%
ACTUAL	72.3%	70.6%	70.8%	68.9%	69.4%
Counting of days: The 120 days is calculated from the date the charge is docketed.					

Management Strategies: In addition to the Quality Review Program of the Division of Operations-Management, which is highlighted in the Program Evaluation section on page 62, and which ensures that all matters before the Agency are handled in a fair and consistent manner, the following additional steps are undertaken to assist with compliance:

- ▶ The Office of the Executive Secretary notifies the parties in cases pending before the Board of the Board's Alternative Dispute Resolution (ADR) program. The office also reviews pending cases and conducts active outreach to parties to encourage use of the Board's ADR program. Parties who elect to participate in the ADR program are provided a neutral mediator to assist with efforts to reach a settlement of the case.
- ▶ The Division of Operations-Management and the Division of Enforcement Litigation actively work with the Regions to identify cases pending before the Board that are suitable for resolution through the Board's ADR program.
- ▶ The Compliance Unit conducts ongoing review of compliance case inventory and promptly reviews ALJ decisions, Board decisions and pending Board ADR and court mediation proceedings to ensure that the Region has the resources necessary to deal with difficult or challenging compliance issues. The assistance may range from assigning a person to be available for consultation to having a person or team, either in Headquarters or in another Region, perform all the work or a particular task in the case.
- ▶ The Office of the Executive Secretary tracks on an ongoing basis which cases are in the Board's ADR program, and the outcome of the ADR program settlement efforts.

Strategic Goal No. 2 (Mission):

Promptly and fairly resolve all questions concerning representation of employees.

Objectives:

1. Achieve established performance measures for the resolution of all questions concerning representation of employees.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner.

Measure: The percentage of representation cases resolved within 100 days of filing the election petition.

This measure focuses on the time taken to resolve a representation case, including time spent on both the General Counsel and the Board sides of the Agency.

An employer, labor organization, employee, or group of employees may file a petition in an NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wishes to be represented by a labor organization. When a petition is filed, the Agency works with parties toward a goal of reaching a voluntary agreement regarding conducting an election, as opposed to a Regional Director directing an election, if appropriate. This measure reflects the percentage of representation cases closed within 100 days. A case is closed when the question as to whether or not a labor organization will represent employees has been finally resolved.

Representation cases are resolved and closed in a number of ways:

- ▮ Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in processing may be based on a variety of reasons,

for example: the employer does not meet the Agency's jurisdictional standards; the petitioner fails to provide an adequate showing of interest to support the petition; and/or the petition was filed in an untimely manner.

- ▮ Cases may also be withdrawn by the petitioner for a variety of reasons, such as lack of sufficient support among the bargaining unit.
- ▮ The majority of cases are resolved upon issuance of either a certification of representative (the union prevails in the election) or a certification of results (the union loses the election).
- ▮ In a small percentage of cases, there are post-election challenges or objections to the election. The case is not closed until the challenges and/or objections have been resolved.

In FY 2018, the NLRB exceeded its goal of 85.8 percent by 3.0 percent to close all representation cases within 100 days from the filing of the petition.

GOAL NO. 2, TABLE 1

Percentage of Representation Cases Resolved Within 100 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	85.3%	85.4%	85.5%	85.7%	85.8%
ACTUAL	88.1%	87.1%	87.6%	89.9%	88.8%
Counting of days: The 100 days is calculated from the date the petition is formally docketed.					

Management Strategies: The following memos outline the steps taken to assist with compliance.

GC 15-06: Guidance Memorandum on Representation Case Procedure Changes Effective April 14, 2015

<https://www.nlr.gov/reports-guidance/general-counsel-memos>

This memo outlines the final rule that the Board adopted on December 15, 2014 that modifies the procedures applicable to the processing of representation cases. The changes went into effect on April 14, 2015 and apply to all representation cases filed on or after that date. The Board adopted these amendments to provide targeted solutions to enable the Board to better fulfill its duty to protect employees' rights by fairly, efficiently, and expeditiously resolving questions of representation by removing unnecessary barriers to the fair and expeditious resolution of representation cases, simplifying representation-case procedures, codifying best practices, and making them more transparent and uniform across regions. The memo details the following: Initial processing of the petition, election agreements, hearing preparation, hearings, pre-election decisions, election preparations and election, post-election procedure and decisions, blocking charges, election certifications and use of voter list.

OM 16-16 (revised): Dates for Hearings and Statement of Position Due Dates

<https://www.nlr.gov/reports-guidance/operations-management-memos>

This memo was sent to all Regional Directors, Officers-in-Charge and Resident Officers from Operations-Management regarding the changes to the procedures applicable to processing representation cases with a focus on specifying the date for scheduling a pre-election hearing in RC, RD, and RM cases and when the Statement of Position is due. The memo includes a chart which sets forth the hearing dates and Statement of Position due dates for the RC, RD, and RM petitions filed from May 2, 2016 through April 28, 2017 that do not present unusually complex issues.

**GC 15-08 (Revised): Guidance Memorandum on Electronic Signatures to Support a Showing of Interest**

This memo was sent to all Regional Directors, Officers-in-Charge and Resident Officers from the General Counsel regarding the changes to the procedures applicable to processing representation cases with a focus on the question of whether the proposed regulations should permit or prohibit the use of electronic signatures to support a showing of interest. The Board determined that its regulations as currently written are sufficient to permit the use of electronic signatures. The Board then charged the General Counsel with the responsibility to determine whether, when and how electronic signatures can practically be accepted and to issue guidance on the matter. The General Counsel determined that the evidential standards that the Board has traditionally applied to handwritten signatures apply equally to electronic signatures and that it is practicable to accept electronic signatures in support of a showing of interest if the Board's traditional standards are satisfied. The memo goes on to give guidance about the current board regulation of showing interest, how the application of the Board's traditional showing of interest standards to electronic signatures is a practicable and cost-effective means of ensuring the authenticity of the electronic form, and guidance on implementation.

Strategic Goal 3 (Support):

Achieve Organizational Excellence

Objectives:

1. Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish our mission.
2. Promote a culture of professionalism, mutual respect, and organizational pride.

Strategic Goal 3 is a management strategy base goal. There are two objectives that have their own set of initiatives. Each initiative has a set of management strategies that were created in order to show the different offices of the Agency that are involved in achieving the goal. For the full outline of the goal please see Appendix D-3 on page 153.

Organizational Excellence ensures that all organizational systems are aligned and functioning cohesively together. Continuous commitment to assessing and addressing organizational excellence enables the Agency to proactively enhance the organization's service. Accomplishments in FY 2018 include:

Employee Development

- » The Agency continued to move forward with the transition to USA Performance. Guidance was issued on July 3, 2018 to managers and supervisors on completing the first rating phase using USA Performance for all Non-Bargaining Unit Employees.
 - OPM conducted an audit to make certain that the essential points of the Agency's performance management system are in compliance. This was validated by OPM staff during the Human Accountability Assessment Framework (HCAAF) audit in April 2018. OPM advised that NLRB systems provided robust tools and resources to support the process.
- » Security Branch hosted Active Shooter Preparedness Training for the Headquarters employees. The Security Branch is ensuring through Office Managers that all field offices have received this critical training. The last time this was coordinated through the field offices was 2016.
- » Office of Employee Development (OED) developed online content for legal writing and provide legal writing coaching for Headquarters employees.
- » Office of Employee Development (OED) continued updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance to address critical future skills needed by the Agency.
 - Additionally, upon the acquisition of additional staff, the Human Capital Planning Officer (HCPO) plans to work with leadership to develop a core set of HRstat metrics to use in tracking and analyzing competencies and skills gap data for NLRB's mission critical occupations. The Security Branch worked with OED to release the 2016 Continuity of Operations Training for Agency personnel, for the third year in row via Skillport.
- » HCPO developed a draft Human Capital Operating Plan pursuant to the newly revised regulations at 5 CFR 250. The draft outlines human capital goals, objectives, and strategies and is currently being reviewed by management.
- » The Agency continued to comply with OPM's hiring reform efforts by using the 80-day hiring model.



Workforce Management

- » The Agency continues to provide information and pertinent training regarding disability in the workforce, workplace laws and regulations, as well as information on Agency recruitment. During the 4th Quarter, the Office of Human Resources (OHR) embarked on a new partnership with several Senior Community Employment Service Program (SCSEP) affiliates for Headquarters and Chicago and New York field offices.
- » OHR continued to validate that employees have performance plans through its new USA Performance reporting system. The process is being used with all non-bargaining unit employees. The rollout for bargaining unit employees will occur during FY19.
- » OHR management team finalized narratives for their program areas to ensure that all HR professionals deliver a unified New Employee Orientation (NEO).
- » Office of Equal Employment Opportunity (OEEEO) continues to lead the Agency-wide effort to develop

programs for the Agency through the EEOC's Management Directive 715 (MD715).

- OEEEO held 2 quarterly meetings with a cross section of organizational units, including OHR, OED and the Division of Operations-Management (Ops).
- It was determined that many EEO and inclusion efforts have a technology component, including handling EEO data, responding to Agency reporting requirements and 508 accessibility. OEEEO consulted with the Office of the Chief Information Officer (OCIO) in the 2nd quarter to ensure improved reporting in the MD715 report. It was determined that OCIO will be a regular partner in all quarterly model EEO meetings. Each office is required to identify, develop, measure and report out on its progress on issues related to barriers to full opportunity. These efforts will result in a more relevant and responsive MD715 report and plan.

- » OEE0, OHR and OED delivered comprehensive mandatory training for managers and supervisors on the Agency's revised Reasonable Accommodation Policy.
 - » OED led the effort to develop comprehensive mentoring and career development programs for administrative support professionals and for all employees.
 - OED identified resources to develop Individual Development Plans for Agency employees.
 - » OEE0 is leading the effort to develop an Agency-wide Diversity and Inclusion Council, as a best practice among federal agencies and as part of the Agency's Diversity and Inclusion Strategic Plan (2012 and 2016), to fully engage all employees by serving as a platform for discussion of diversity and inclusion issues and to develop recommendations to leadership. This proposed council would serve as the platform for recognition of Agency Employee Resource Groups.
- Motivation**
- » HCPO conducted 16 EVS organizational assessments with senior executives on the 2017 EVS results with a focus on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enables the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; engaged in root cause analyses and action planning efforts for challenge areas
 - HCPO developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.
 - During the assessment meetings, the HCPO also discussed, inter alia, the two EVS Agency-wide strategic areas of focus: effective leadership and communication. As a result, leadership will continue to engage in EVS action planning efforts and implement best practices designed to drive higher levels of employee satisfaction and engagement, with a particular focus on improving the work environment.
 - » The HCPO completed a comprehensive analysis of the 2017 Federal Employee Viewpoint Survey (FEVS) results and provided each division/office with a comprehensive organizational assessment briefing of the EVS results. During those briefings, a target of increasing the number of employees responding to the 2018 EVS was set at a five (5) percent increase over the 2017 EVS participation rate.
 - The implemented strategies included the HCPO building successive weekly communications with managers and supervisors during the survey administration period where they would encourage their staff to participate; a communication plan that provided division/office heads with a weekly report on their organization's participation levels; an EVS Management Toolkit to leverage in promoting the EVS; and EVS promotional flyers distributed in NLRB's work space promoting the survey administration period.

Strategic Goal No. 4 (Support):

Manage Agency resources in a manner that instills public trust.

Objectives:

1. Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.
2. Evaluate and improve the Agency's outreach program
3. Conduct all internal and external Agency business in an ethical and timely manner.

Strategic Goal 4 has both measures and management strategies. There are three objectives that have their own set of initiatives. Each initiative has a set of measures and/or management strategies that show the different offices of the Agency that are involved in achieving the goal. For the full outline of the goal please see Appendix D-4 on page 154. Federal employees are charged with managing programs and federal funds in an efficient and effective manner. As stewards of these federal funds, the Agency is making every effort to instill public trust. Accomplishments in FY 2018 include:

Information and Technology:

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

NxGen presently manages:

Internal users	1,242
Cases	352,032
Case Actions of the Agency	1,225,231
Documents, images, and videos, each linked to its Action and Case	10,375,671

The Agency expanded electronic distribution of case documents for 15 document types resulting in 626 documents being sent to the USPS electronically, and in savings for the Agency.

The Agency uses an electronic filing program (E-file) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	50,682
Number of Documents Received	79,293
Number of Board and ALJ Decisions E-Served	593

Total Number of parties E-Served Decisions	27,249
Number of E-Deliveries of Case Documents	4,148

The total number of case documents available for public access in FY 2018 was **1,259,762**

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the document types available to the public.

» To streamline Agency processing, the Administrative Systems Team focused on Business Process Automation using SharePoint as the platform. The Administrative System's team is in the process of automating approximately 100 of the Agency's processes/forms using SharePoint, InfoPath, web services and Microsoft Azure components. The processes completed in FY2018 are:

- Administrative Professional Award Nomination
- Advanced Annual and Sick Leave
- Duress Alarm Test
- Facilities Request

- Honorary Award Nomination
 - Property Pass
 - Recruitment Strategy
 - Superior Qualifications
 - Training Request
- » The Administrative Systems team also completed the modernization of two applications; Archivalware and WIP/CiteNet, to remediate security vulnerabilities associated with end of life operating system support and allow for the continued growth of the systems with respect to access control and data management.
- » The Administrative Systems team also completed several projects designed to make the SharePoint-based intranet a robust, dynamic, and secure location for employee collaboration:
- Development of a new Events and Announcements application was deployed. This will allow contributors the ability to input events or announcements to be posted on the Intranet home page, the Events and Announcements home page and email notifications to be sent for greater visibility and awareness.
 - Launched a redesign of the Service Catalog to provide easy to use categorization of services and allows for growth to add additional services as processes are automated. Included in a recent updated release was an alternate view of all services alphabetized A-Z for another easy way to find and launch the services.
 - Implemented a dynamic Staff Directory which allows employees to easily find office and staff information through browse and/or search.
 - Created various private office workspaces with document libraries, discussion boards, and calendars for group collaboration.

Financial Management:

- » To enhance internal controls of the purchase card program, AMB, in coordination with the Budget Office continues to enforce a process by which quarterly target amounts for purchase card spending are sent to each headquarters and regional offices. These amounts are disseminated at the beginning of each quarter to the Division of Operations-Management. Operations Management is responsible for communicating specific dollar amounts to the respective regional offices, and for tracking the overall expenditures from the regional offices. In addition to quarterly target amounts sent to the Headquarters Offices, all headquarters PCHs submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
- » AMB continues to utilize the bulk purchasing program for paper and toner across the Agency. The program allows for better coordination, distribution and cost-savings of required items. In FY18, bulk orders have taken place in November, February, May, and August 2018.
- » As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned businesses. NLRB will work towards achieving the statutory goal for service-disabled veteran owned businesses in FY 2019.
- » From October 1, 2017 – September 30, 2018, a total of \$28,057,166 and 244 contract actions were reported within the Federal Procurement Data System (FPDS). Out of this amount, \$18,211,493 and 119 actions went to small businesses. This is a 22% increase in awards given to small business from the previous year. In FY 2017, NLRB awarded 41.7% to small businesses. In FY 2018, this percentage increased to 65%.

Category	Gove-Wide Goal	2018	2017	2016	2015	2014	2013
Small Business	23%	65.0%	41.7%	36.5%	39.7%	31.6%	34.1%
Women Owned Small Business	5%	5.0%	7.4%	11.1%	12.4%	13.5%	17.8%
Small Disadvantaged Business	5%	52.0%	28.3%	8.0%	10.7%	11.0%	7.3%
Service-Disabled Veteran Owned Small Business	3%	1.0%	1.6%	2.4%	0.3%	0.9%	0.3%
HUBZone	3%	41.0%	23.3%	3.4%	2.1%	2.2%	0.8%

Agency Outreach

The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.

The Agency provided direct outreach to immigrant populations by:

- › Speaking in Spanish and other languages at events organized by the consulates or other community and non-profit groups, such as the Mexican Embassy, the Workplace Justice Project, and workers' rights clinics, to educate the public about the NLRA
- › Staffing booths at informational fairs
- › Responding to inquiries from individuals who seek consular services
- › Participating in Platicas en Consulado (Consul on Wheels)
- › Participating in various Labor Rights Week activities in numerous locations throughout the country sponsored by different consulates, including Mexico, El Salvador, Philippines, and Guatemala
- › Appearing on Spanish-radio talk show

Other Agency activities directed at the immigrant population included:

- › Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes, including a delegation

from South Korea, Shaanxi Federation of Trade Unions, and State Tobacco Monopoly Administration of China

Activities directed at the youth population include:

- › Leading discussions for high school and middle school classes concerning the development of the NLRA
- › Participating in the Great American Teach In

The Agency continues to partner with the Department of Homeland Security (DHS), the Department of Labor (DOL) (Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), and Office of Federal Contract Compliance Programs (OFCCP)), Office of Special Counsel (OSC), DOJ and Equal Opportunity Employment Commission (EEOC) in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.

The Agency has joined with other state and federal agencies by:

- › Participating in the Vulnerable Workers Project
- › Participating in "listening sessions" coordinated by the Asian American and Pacific Islanders community
- › Participating in Wage Theft Task Force discussions
- › Participating in SBA Ombudsman roundtables and listening sessions



The Agency produced an informational pamphlet entitled "Protecting Employee Rights," which contains an expanded discussion of an employee's right to engage in concerted activity and other rights under the NLRA, which is available on the NLRB website and in hard copy, in English and Spanish.

The Agency maintains webpages for each individual regional office. This webpage contains news articles relevant to the particular region. To ensure that these pages remain fresh, news articles are tagged by the Agency's Office of Public Affairs and automatically loaded on the Region's webpage.

The Agency maintains an internal Sharepoint database through which the Agency outreach coordinators post and share outreach materials and participate in a discussion board sharing ideas and leads for outreach.

The Agency maintains an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.

The Agency inserted QR codes to its correspondence to direct the public to the website.

Ethics:

The Ethics Staff continued to communicate with Agency leadership about the status of ethics projects and to discuss notable ethics issues.

In coordination with the Agency's General Counsel and Chairman, the Ethics Staff:

- › Prepared and distributed the 2017 Annual Ethics Briefing to all Public and Confidential Financial Disclosure filers as required by the Office of Government Ethics. We presented the briefing

through the Agency's learning management system and covered conflicting financial interests, impartiality, misuse of position, gifts, and the NLRB's Supplemental Regulations. As of the December 31st due date, 92% of Agency filers had completed the 2018 Annual Ethics Briefing. Employees who did not complete the training by the specified due date indicated that their delay was due to technical issues and schedule conflicts (mission related or scheduled leave). However, all filer employees completed the training requirement on or before January 5, 2018.

- » Distributed the 2018 Annual Ethics Briefing to all Agency supervisors and managers. By making this briefing available to supervisors and managers, we ensure that all management employees are in a position to identify potential ethics issues and avoid situations that distract from the mission of the Agency.
- » Reissued Combined Federal Campaign (CFC) guidance memo and Job Aid to all Agency employees. These documents covered the relevant rules and regulations, including those applicable to CFC events, and discussed the importance of preventing coercive activity when a supervisor serves as a campaign coordinator and/or keyworker for the CFC.
- » Reissued Speaking Engagement memo to all Agency employees. This document provided general guidance about speaking engagements and emphasized the difference between speaking in an official versus a personal capacity. In addition, the memo encouraged the use of the NLRB Waiver Addendum which affirms that by consenting to the recording of a presentation, an NLRB employee is not permitting the sponsor to use their official title or likeness to advertise or endorse the recording, or endorse any other products or services offered by the organization.
- » Distributed guidance memo to all Agency employees that addressed monetary and in-kind donations to disaster

relief programs, and individual donations to coworkers who were victims of Hurricanes Maria and Irma.

- » Partnered with the OCFO to draft a policy statement relating to the acceptance of travel reimbursement from a non-federal source.
- » Assisted Board and General Counsel in evaluating ethics recusal obligations.
- » Partnered with the Office of the Chief Information Officer (OCIO) to index legal ethics Tips of the Month by subject matter. This feature of SharePoint should make it easier for Board agents to find legal ethics resources more efficiently.
- » Assisted the General Counsel's office in developing a process for approving speakers for NLRB sponsored events.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During FY2018, the Ethics Staff:

- » Provided customized ethics training to newly confirmed political appointees and their front office staffs.
- » Developed a post-employment webcast which is provided to all employees who retire or resign from government service. This webcast supplements the Agency's post-employment guidance documents by providing general guidance covering the federal government post-employment restrictions applicable to all government employees, as well as specific post-employment restrictions from the ABA Model Rules of Professional Conduct applicable to Agency attorneys. It helps to ensure the confidentiality of information that belongs to the Agency.
- » Began development of the 2018 Annual Ethics Briefing which will be offered to all financial disclosure filers, as well as all supervisors and managers, before the end of the calendar year.

Measure	Goal	2018	2017	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	89%	92%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%	100%	100%

- ▶ During FY 2018, the Ethics Office received 927 inquiries. 826 (89%) were resolved within 5 business days. (See table above)
- ▶ All financial disclosure reports filed in FY 2018 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.
- ▶ The annual financial disclosure cycle began on January 1st. NLRB filers use electronic filing systems to comply with the Office of Government Ethics' filing requirement.
- ▶ In mid-January we began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2017. In all cases, we completed the review of each report within 60 days of receipt and we notified the filer of any real or potential conflicts.

During FY 2018, the Agency completed its review of:

- ▶ 31 Annual Confidential Financial Disclosure Reports (OGE 450)
- ▶ 105 Annual Public Financial Disclosure Reports (OGE 278e)
- ▶ 13 New Entrant Public Financial Disclosure Reports (OGE 278e)
- ▶ 119 Monthly Transaction Reports (OGE 278T)
- ▶ 11 Termination Reports (OGE 278)

Note: Review and approval of New Entrant and Annual filings resulted in 118 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

Internal and External Audit Responses:

Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the Office of Inspector General (OIG) audit recommendations

- ▶ OCIO addresses data calls related to DHS Binding Operational Directive 18-01, Enhanced Email and Web Security.
- ▶ OCIO responded to data calls in relation to BOD 18-02, High Value Assets (HVA).
- ▶ OCIO submitted FISMA quarterly reports to DHS.
- ▶ Juniper ScreenOS and Firewall and VPN Server Data Call in Q1
- ▶ CISCO vulnerability Data Call in Q2

Summary

- ▶ From October 1, 2017 to September 30, 2018, the FOIA Branch received 1,312 requests and responded to 780 of those requests within 1-20 days. Thus, 54.8 percent of the FOIA requests were processed within the 20 day statutory time period.
- ▶ During Fiscal Year 2018, the FOIA Branch sought an extension of time to process a FOIA request beyond the 20 day statutory time period in 1 percent of the FOIA requests received.
- ▶ During Fiscal Year 2018, the FOIA Branch received 12 FOIA Appeals. The average response time was 20 working days. The Agency did not seek an extension of time to respond to the FOIA appeals.
- ▶ The NLRB had a FOIA request backlog of 294 at the end of Fiscal Year 2017. At the end of Fiscal Year 2018, the NLRB had a FOIA request backlog of 90, which reflects a backlog decrease of 69.39%.

FOIA:

Measure	2018	2017	2016	2015	2014
Respond to initial FOIA requests within 20 working days	41 days; 54.8%	46 days; 35.9 %	33 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	1%	10.5 %	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	20 working days	20 working days	32 working days	24 working days	20 working days

Reports

Each year, the FOIA Branch prepares an Annual Report, which contains statistics on the number of FOIA requests and appeals received, processed, and pending during the fiscal year, and the outcome of each request. The NLRB FOIA Annual Reports and the NLRB FOIA Quarterly Reports are available on the:

1. NLRB website at <https://www.nlr.gov/news-outreach/foia>,
2. DOJ website at <https://www.justice.gov/oip/reports-1>, and
3. FOIA.gov website <https://www.foia.gov/>

The FOIA requires each agency Chief FOIA Officer to report to the Attorney General on their performance in implementing the law and the efforts to improve FOIA operations. The NLRB Chief FOIA Officer Reports are publically available on the:

1. NLRB website at: <https://www.nlr.gov/news-outreach/foia>, and
2. DOJ website at <https://www.justice.gov/oip/reports-1>.

Proactive Disclosure

In response to receiving several monthly requests for certain records filed or issued by the twenty-six Regional Offices, the FOIA Branch created a webpage where requesters may directly search for these records. These records are: Representation Petitions and Certifications in RD, RM, & RC cases; and ULP Charges and Dismissal

Letters in CB, CC, CD, CP, CG, & CE cases. The FOIA Branch began posting the January 2017 records online at: <https://www.nlr.gov/region-monthly-uploads>. On a monthly basis, the FOIA Branch maintains and updates this webpage with new responsive records in accordance with the FOIA.

In July 2017, the FOIA Branch became a FOIAonline participating agency. As the FOIA case management system, FOIAonline provides the FOIA Branch with technology tools for FOIA tracking, processing, and posting. Additionally, the NLRB has proactively made more responsive records available to the public on the FOIAonline website <https://foiaonline.gov/foiaonline/action/public/home>.

Training

The FOIA Branch continues to promote and use the DOJ training tools such as the FOIA Professional e-Learning Module and the Federal Employee e-Learning Module, which are available to all Agency employees on the NLRB e-Learning platform.

If you are unfamiliar with the FOIA, please view the [DOJ FOIA Training for Federal Government Employees](#) available on the NLRB's Skillport and contact your colleagues in the FOIA Branch.

Factors Affecting Agency Performance

Various factors can affect Agency performance as a whole, in addition to each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors include case intake, settlements, Board Member vacancies, the potential effect of case precedent and statutory changes, nationwide work-related activities by external entities, technological advances, and economic fluctuations.

Case Intake

The Agency's FY 2018 case intake totals 20,961 and includes 18,871 ULP cases and 2,090 representation cases. NLRB Board agents effectively and efficiently process all cases that are brought to the Agency by the

general public. Comprehensive and complex matters that come before the Agency are often attributable to external factors, such as: ongoing nationwide efforts to improve the wages and working conditions of workers in the retail and fast food industries; the increased prevalence and evolving tools and usage by employees of technology and social media in and outside of the workplace to discuss terms and conditions of employment with one another, and the related handbook provisions and workplace rules generated therefrom; expanded use of mandatory arbitration clauses in employment matters; bankruptcies; jurisdiction over enterprises; increased understanding of statutory application in non-union workplaces; and difficult questions concerning



single, joint, and successor employer relationships, and supervisory status, as well as defining employees covered under the NLRA.

Settlements

The initial processing and disposition of new case filings in the Regional Offices drives the intake for other stages of the casehandling pipeline. Over the past few years, more than 90 percent of those cases in which merit is found are settled without formal litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is, of course, not entirely subject to the Agency's control. When the process becomes formal and litigation takes over, Agency costs increase. The Agency calculates that every one-percent drop in the settlement rate costs the Agency more than \$2 million.

Board Member Terms

The staggering of Board Member terms and the filling of a vacant seat by an individual who will not be a Board Member for a full-term impairs Board productivity, as successive Board Members often have to get up to speed on the same case matter. Currently, the Board is not at full composition since one vacancy caused by the expiration of a Board Member's terms has not been filled.

Potential Effect Of Statutory Changes

As a general matter, changes in the law can affect NLRB operations and could have consequences on the Agency's case load. Statutory changes, for example, could lead to an increase in ULP charges and/or election petitions filed with the Agency, with corresponding increases in investigations and proceedings conducted by Agency personnel. Statutory changes may also directly mandate additional litigation by the Agency, e.g., seeking injunctive relief in federal district court.



Reliability of Performance Data

Program Evaluation

The NLRB uses various techniques and mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. The Board regularly tracks the status of all of its cases to determine performance against yearly targets that support the Agency's strategic goals and measures. A group of senior management officials, including, among others, the Deputy Chief Counsels of each of the Board Members and the Executive Secretary, periodically review the status of cases, prioritize cases, and develop lists of cases that the Board Members will jointly focus on in order to facilitate the issuance of decisions in those cases. These representatives also report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic case management system that captures all case events in a database from which case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss case priorities and the overall processing of cases.

The NLRB regularly monitors settlement and litigation success rates of ULP cases. In FY 2018, Regional offices settled 97.5 percent of meritorious ULP cases and won 88 percent of ULP and Compliance matters in whole or in part. A total of over \$54.3 million was recovered in backpay, fines, dues and fees and over 1,200 employees were offered reinstatement. The Division of Judges closed 146 hearings, issued 150 decisions and achieved 449 settlements. The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. In FY 2018, the United States Courts of Appeals ruled on Board decisions in 64 enforcement and review cases. Of those cases, 89.1 percent were enforced or affirmed in whole or in part. As to monitoring representation cases, in FY 2018, 98.2 percent of all initial elections were conducted within 56 days of filing.

Further, the General Counsel has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality



Review Program of the Division of Operations-Management reviews ULP, representation, and compliance case files annually to ensure that they are processed in accordance with substantive and procedural requirements, and that the General Counsel's policies are implemented appropriately. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's initiatives and priorities, Impact Analysis prioritization of cases, and compliance with Agency decisions. Additionally, personnel from the Division of Operations-Management review all complaints issued in the Regions to ensure that pleadings are correct and supported. They also conduct site visits during which they evaluate Regional casehandling and administrative procedures. In addition, to assess the quality of litigation, a committee reviews all ALJ and Board decisions that constitute a significant loss. Moreover, the Regional Offices' performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities is incorporated into the Regional Directors' annual performance appraisals.

The Division of Operations-Management regularly reviews case decisions to determine the quality of litigation. Other Divisions and offices, such as the Office of Appeals, Division of Advice, Division of Legal Counsel and Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of field offices. Top Agency management also meets regularly with relevant committees of the American Bar Association to obtain feedback on their members' experiences practicing before the NLRB.

In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before district courts with regard to

injunction litigation. In FY 2018, the Injunction Litigation Branch received 105 cases from Regional Offices to consider for discretionary injunctive relief under Section 10(j) of the Act. The Board authorized 22 cases and Regional Offices filed 10(j) petitions in 6 cases. The "success rate", i.e., the percentage of authorized Section 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 89 percent. The Office of the General Counsel continues to focus its attention on "nip-in-the-bud cases," where a nascent organizing campaign is being unlawfully squelched, and on first outreach bargaining and successor cases, where the relationship between the employer and the union is most fragile.

As previously mentioned, while there are a few outcome-based performance measures associated with the two support goals, the majority of them are management strategy driven. The Agency collects quarterly performance metrics and strategies on the two Agency support goals, as well as the NxGen reports for the mission-related goals. The metrics and strategies are tracked and monitored throughout the year. The compiled data is then presented in this document.

The data reported by OCIO comes from NxGen. The FOIA Branch maintains their case data in FOIAonline, which is a FOIA tracking and processing web tool. FOIAonline also generates annual, quarterly, and other workload reports to effectively monitor all aspects of FOIA casehandling. The Ethics Office uses an electronic spreadsheet to track when an employee reaches out to the Office with an ethics inquiry. The Office logs the question and collects several pieces of data about the inquiry to include the date that the inquiry was made and the date that guidance was provided. The spreadsheet calculates the number of days between the two dates.

Protecting Democracy in the Workplace Since 1935

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Financial



Message From The Acting Chief Financial Officer

November 13, 2018

As the Acting Chief Financial Officer of the NLRB, I am pleased to present the consolidated financial statements for the Fiscal Year 2018 Performance and Accountability Report. For the fifteenth consecutive year an independent auditor has rendered an unmodified or “clean” opinion on the NLRB financial statements. The auditors identified 2 material weaknesses in our financial reporting during this audit cycle.

The Office of the Chief Financial Officer is responsible for improving efficiency and effectiveness in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations. The OCFO’s focus continues to be on process improvement and internal controls.

During Fiscal Year 2018 the OCFO monitored and reported on Agency performance goals as stated in the Agency’s Strategic Plan and also continued efforts on reviewing and mapping internal financial management processes that will improve controls, reduce costs, and increase efficiency.

I wish to acknowledge and thank the OCFO staff for their dedication to the NLRB’s mission and their diligent efforts in maintaining an unmodified opinion on our financial statements. Their demonstrated knowledge of the NLRB and its programs, as well as their constant desire to provide excellent customer service is commendable.

The NLRB continues its commitment to continuous improvement in financial management, internal controls, and in the production of timely, accurate, reliable, and transparent financial information.



A handwritten signature in black ink that reads "Beth Tursell".

Beth Tursell

Acting Chief Financial Officer

Independent Auditor's Report

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 13, 2018

To: John F. Ring
Chairman

Peter B. Robb
General Counsel

From: David P. Berry 
Inspector General

Subject: Audit of the National Labor Relations Board Fiscal Year 2018 Financial Statements
(OIG-F-23-19-01)

This memorandum transmits the audit report on the National Labor Relations Board (NLRB) Fiscal Year 2018 Financial Statements with the Management Response.

The Accountability of Tax Dollars Act of 2002 requires the NLRB to prepare and submit to Congress and the Director of the Office of Management and Budget annual audited financial statements. We contracted with Castro & Company, an independent public accounting firm, to audit the financial statements. The contract required that the audit be done in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and Bulletin 19-01, *Audit Requirements for Federal Financial Statements*, issued by the Office of Management and Budget.

In connection with the contract, we reviewed Castro & Company's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. Castro & Company is responsible for the attached auditor's report dated November 13, 2018, and the conclusions expressed in the report. However, our review disclosed no instances where Castro & Company did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation extended to Castro & Company and our staff during the audit.



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Independent Auditor's Report on the Financial Statements

Inspector General
National Labor Relations Board

We have audited the accompanying balance sheets of the National Labor Relations Board (NLRB) as of September 30, 2018 and 2017 and the related statements of net cost, changes in net position, and budgetary resources for the fiscal years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 19-01, *Audit Requirements for Federal Financial Statements*. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the agency's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Opinion on the Financial Statements

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the NLRB as of September 30, 2018 and 2017, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Independent Auditor's Report
Page 2

Required Supplementary and Other Information

U.S. generally accepted accounting principles require that the information in the *Required Supplementary Information*, including *Management's Discussion and Analysis*, be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. The supplementary information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the basic financial statements. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The information presented in the Messages from the Chairman, General Counsel, and Chief Financial Officer, list of Board Members, Other Accompanying Information, and Appendices is presented for purposes of additional analysis and are not required as part of the basic financial statements. Such information has not been subjected to auditing procedures applied by us in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

Other Reporting Required by Government Auditing Standards

In accordance with U.S. *Government Auditing Standards* and OMB Bulletin No. 19-01, we have also issued our reports dated November 13, 2018, on our consideration of NLRB's internal control over financial reporting and the results of our tests of its compliance with certain provisions of laws, regulations, and other matters that are required to be reported under *Government Auditing Standards*. The purpose of those reports is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. Those reports are an integral part of an audit performed in accordance with U.S. *Government Auditing Standards* and OMB Bulletin 19-01 in considering the NLRB's internal control and compliance, and should be read in conjunction with this report in considering the results of our audit.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, U.S. Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Castro & Company, LLC

November 13, 2018
Alexandria, VA



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Independent Auditor's Report on Internal Control over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*

Inspector General
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB), which comprise the balance sheets as of September 30, 2018 and 2017, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended, and the related notes to the financial statements, and have issued our report thereon dated November 13, 2018. We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 19-01, *Audit Requirements for Federal Financial Statements*.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements as of and for the year ended September 30, 2018, we considered NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of NLRB's internal control, determining whether controls had been placed in operation, assessing control risk, and performing tests of NLRB's controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not to express an opinion on the effectiveness of NLRB's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of NLRB's internal control over financial reporting. We limited our internal control testing to those controls necessary to achieve the objectives described in the OMB Bulletin No. 19-01. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982 (FMFIA), such as those controls relevant to ensuring efficient operations.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purposes described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be significant deficiencies. We did identify two deficiencies in internal control, described below, that we consider to be material weaknesses.

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NLRB's Response to Findings

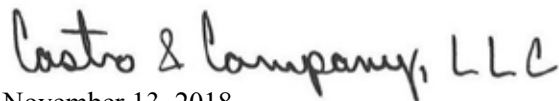
NLRB's response to the findings identified in our audit is described in the accompanying Audit Response Letter. NLRB's response was not subject to auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

We noted less significant matters involving internal control and its operations which we have reported to NLRB management in a separate letter dated November 13, 2018.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and the result of that testing, and not to provide an opinion on the effectiveness of NLRB's internal control. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering NLRB's internal control. Accordingly, this communication is not suitable for any other purpose.

This report is intended solely for the information and use of the management and NLRB Office of Inspector General, OMB, the Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.



November 13, 2018
Alexandria, VA

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MATERIAL WEAKNESSES

I. Lack of Quality Control Procedures Caused Financial Reporting and Accounting Discrepancies

The Accountability of Tax Dollars Act of 2002 requires that NLRB submit audited financial statements to Congress and the Director of OMB on an annual basis. OMB Circular No. A-136, *Financial Reporting Requirements*, defines the form and content of financial statements to be prepared by NLRB that must also comply with Federal Accounting Standards. The statements must be prepared from an integrated financial management system containing sufficient structure, effective internal control, and reliable data. The financial reports must also be supported by comprehensive policies, with strong internal controls, that prescribe the procedures for processing and summarizing accounting entries, and preparing the financial statements.

As previously reported in Fiscal Year (FY) 2016, during our review of NLRB's financial statement preparation process during FY 2018, we identified issues that impacted NLRB's ability to effectively accumulate, assemble, and analyze information presented in its financial statements in accordance with applicable guidance. Examples of the errors noted include the following:

Financial Reporting

NLRB does not have sufficient resources to implement financial statement reporting requirements and sufficient controls in place to ensure that the financial statements are thoroughly prepared, reviewed, and presented in accordance with applicable requirements of OMB and Federal Accounting Standards, including the following:

- During our review of the financial statements and related crosswalks as of 6/30/2018, we identified an error on the reported balances for Imputed Financing Sources and Net Cost of Operations due to an incorrect journal voucher (JV) reversal of \$16.3M entered in January 2018. The JV reversed the Fourth Quarter 2017 Imputed Costs, which brought the Imputed Financing total to -\$1.5M on the Statement of Changes in Net Position (SCNP). After we brought the error to management's attention, a JV to correct the imputed cost to the correct balance of \$14.9M was recorded in August 2018.
- During our review of the financial statements and related crosswalks as of 9/30/2018, we identified that NLRB did not incorporate changes to the crosswalks for the SCNP and the Statement of Budgetary Resources (SBR) as required by the June 2018 Treasury Financial Manual (TFM) and the July 30, 2018 update of OMB Circular A-136, which are utilized to prepare the respective financial statements. Instead, NLRB management used the old crosswalks and modified the statements into the new presentation format. After we brought this to management's attention, the SCNP and SBR crosswalks were resubmitted in the updated format.

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Journal Vouchers

We noted that NLRB did not follow quality control procedures over the preparation, review, approval or recording of JVs throughout the fiscal year. During our interim audit procedures, we noted the following:

- Various JVs above \$100,000 were posted to the general ledger (GL) prior to the secondary reviewer's approval as required by NLRB's internal policy. Similar exceptions were noted as of 9/30/2018;
- JVs were not adequately supported;
- Various JVs did not include an adequate detailed explanation for the purpose of the JV; and
- Various JVs related to Backpay were processed without an appropriate explanation for the reconciling differences. NLRB management processed these JVs period after period specifically to match the Governmentwide Treasury Account Symbol Adjusted Trial Balance System (GTAS) without researching the root cause of the differences; therefore, differences were not corrected in a timely manner.

Property, Plant, and Equipment (PP&E)

During our interim and year-end procedures, we noted that controls were not operating effectively to ensure PP&E accounts were properly reviewed and correctly reported on the financial statements, and as a result we noted the following:

- The PP&E reconciliation as of 6/30/18 and 9/30/18 lacked evidence of proper review and approval by NLRB Management.
- Incorrect amounts were reported for Construction-in-Progress (CIP) as of 6/30 and 9/30/18; specifically,
 - A difference of approximately \$36,000 was noted due to NLRB incorrectly recording the CIP amount for a Regional Office project based on a percentage of the original funded amount instead of the revised total funded amount. During the fiscal year, additional funding was approved for the project that increased the total cost, and as a result, an additional \$36,000 should have been recorded in CIP as of 6/30/18. This error was corrected as of 9/30/18 after we brought this to management's attention.
 - A difference of approximately \$56,000 was noted due to NLRB recording an approximate 65 percentage of completion for a Regional Office project instead of the correct 95 percent project completion of the total cost as of 9/30/18.

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- A difference of approximately \$121,000 in Internal Use Software (IUS) as of 6/30/18 was noted as a result of NLRB incorrectly recording a JV reversal and retirement of approximately \$112,000 in IUS in order to correct an April 2017 booking of IUS additions in the Oracle Module. This error was brought to the attention of NLRB management as a result of the FY 2017 year-end audit procedures; however, the error had not been corrected as of 6/30/18 and was only corrected as of 9/30/18, after we brought this to management's attention.
- Documentation to support the retirement of one asset for an approximate cost of \$108,000 and the transfer of another asset with an approximate cost of \$24,000 at a loss of approximately \$7,000 was not provided for review as requested; therefore, we were unable to determine whether these transactions were valid. Additionally, NLRB management was unable to provide evidence of approval for the disposal and/or transfer of those assets. We noted that those assets were not included on the Capitalized Equipment Inventory memo dated April 16, 2018 from the Property Management Section confirming which assets should be removed from inventory due to surplus/transfer.

As part of the FY 2016 financial statement audit, we recommended that NLRB ensure all assets were properly recorded and depreciated to properly reflect asset, contra-asset, and expense balances. Additionally, we recommended that NLRB develop and implement standardized policies and procedures to ensure accountability, monitoring, and oversight of the PP&E disposals; however, the issues noted above as part of the FY 2018 financial statement audit confirm a lack of remediation of the prior year's finding.

Backpay

During our testing procedures of the Backpay balance as of 6/30/18 and 9/30/18, we performed a review of the Other Liabilities General Ledger account used to record fiduciary funds collected by NLRB and held in escrow accounts with the Treasury. Backpay funds administered by NLRB are used to provide a remedy to discriminatees when a violation of the National Labor Relations Act results in a monetary loss to discriminatees due to an unfair labor practice. The Backpay funds that are held by NLRB are received from a charged party/respondent. The Finance Branch disburses the Backpay funds when directed to do so by a Regional Office.

During our audit, we noted that NLRB did not always follow its policies and procedures to evidence proper review and approval of Backpay disbursement requests. Additionally, supporting documentation was not provided for all the disbursement transactions selected during our interim procedures; therefore, we were unable to determine whether the disbursements tested were valid as of 6/30/18.

Additionally, we noted reconciling differences of approximately \$86,000 as of 6/30/18 and \$102,000 as of 9/30/18 between balances reported in the Backpay Management System (BMS) and balances reported in Oracle Federal Financial (OFF) system and Treasury. NLRB management was not reconciling balances in the BMS to the balances in the OFF system on a monthly basis as required by NLRB's internal policy.

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The issues noted above stem from the Finance Branch not having sufficient or adequate resources, nor having sufficient personnel with appropriate skill sets and expertise to perform financial management accounting and reporting throughout the fiscal year. Essential Finance personnel such as the Chief Financial Officer (CFO) position has been vacant since April 2018. The Supervisory Accountant position was vacant for six (6) months of the fiscal year. The vacant positions in the Office of the Chief Financial Officer (OCFO) for most of the fiscal year drastically hindered the OCFO's ability to effectively manage the financial operations of the Agency and ensure the reliability of financial reporting. During the course of our audit, it was not apparent that NLRB had a process in place to cross-train personnel to perform day-to-day financial accounting, analysis, review, and reporting tasks. Additionally, the Finance Branch did not have sufficient quality control procedures in place to detect certain financial reporting and accounting errors until they were brought to their attention by the auditors.

The Government Accountability's Office (GAO) *Standards for Internal Control in the Federal Government*, states

Personnel need to possess and maintain a level of competence that allows them to accomplish their assigned responsibilities, as well as understand the importance of effective internal control. Holding individuals accountable to established policies by evaluating personnel's competence is integral to attracting, developing, and retaining individuals.

Management performs ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. Ongoing monitoring includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions.

Management clearly documents internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination.

Management designs appropriate types of control activities for the entity's internal control system. Control activities help management fulfill responsibilities and address identified risk responses in the internal control system...

Management may design a variety of controls activities for operational processes, which may include verifications, reconciliations, authorizations and approvals, physical control activities, and supervisory control activities.

NLRB's *FY 2018 Backpay Cycle Memo*, states

An accountant reconciles the Backpay System case balances to the OFF system balances on a monthly basis.

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NLRB's *Financial Manual, Journal Vouchers*, states

Approves the JV. The Oracle workflow, initiated by the Accountant, routes the JV to the Accounting Officer's queue for review and approval prior to posting. The Accounting Officer is notified that the JV is ready for approval when the Branch Chief provides the JV package. If the JV's total debits are larger than or equal to \$100k, the Accounting Officer forwards the JV to the CFO for approval; if not, the Accounting Officer approves the JV.

See also applicable criteria in:

- OMB Circular No. A-136, *Financial Reporting Requirements*
- Financial Accounting Standards Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 6, *Accounting for Property, Plant and Equipment*.

Without adequate staffing levels, the proper skill sets, and cross-training, the Finance Branch could continue to encounter challenges in its accounting and financial reporting processes. By not adequately performing management functions specific to monitoring, analysis, review, and oversight, discrepancies may exist but go undetected and uncorrected, thereby causing the financial information to be misstated. Effective management oversight greatly increases NLRB's ability to proactively identify and resolve issues that could result in misstatements in financial accounting and reporting records.

Recommendations:

We recommend that NLRB management:

1. Perform detailed management quality control reviews over the processing of JVs, year-to-year account balance variances, and accrual estimates to ensure discrepancies are minimized and errors are timely corrected.
2. Refine and strengthen policies, procedures, and processes over JVs and PP&E to ensure transactions are adequately supported and recorded accurately.
3. Ensure that reconciliations of the BMS balances to OFF and Treasury balances are completed, documented, and reviewed by management at a minimum on a quarterly basis.
4. Ensure reconciliations contain evidence of all appropriate reviews and approvals.

II. Lack of Sufficient General Information Technology Controls and Monitoring

GAO issued the Federal Information Systems Controls Audit Manual (FISCAM), which formed the basis for our Information Technology (IT) evaluation procedures. We used FISCAM as a guide to our audit as it informs financial statement auditors about IT controls and assists us in

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planning our audit work. FISCAM controls are consistent with the National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53.

The Federal Information Security Modernization Act (FISMA) of 2014 (PL 113-283, 44 USC 3554) requires Federal agencies to improve the security of IT systems, applications, and databases. Each Federal agency must develop, document, and implement a program to provide security for the data and IT systems that support its operations and assets. NIST develops IT security standards and guidelines for FISMA.

Our testing identified weaknesses in four general IT control subject areas: access control, segregation of duties, security management, and configuration management. During our review, we noted the following issues:

Access Control and Segregation of Duties

Access control is a fundamental component of information security for Federal information systems. It ensures that access control policies and programs are in place in order to protect financial data. Access control helps limit or detect inappropriate access and minimizes the risk of unauthorized access to information systems, which in turn protects systems from unauthorized modification, loss, and disclosure of financial data.

Audit logging and an effective incident response program is a fundamental component of information security for Federal systems. Audit logging ensures that auditable events are regularly collected, reviewed, and analyzed for indications of inappropriate or unusual activity. Reviews of audit logs should be done on a timely basis to ensure potential events or incidents are caught and resolved. Maintaining audit logs for a specified amount of time ensures that potential incidents can be further researched and followed-up on for resolution. Incidents should also be tracked and results of the analysis maintained in order to help security professionals routinely assess computer security, perform investigations during and after an attack, and recognize an ongoing attack to prevent future damage that could affect the confidentiality and integrity of financial data.

Segregation of duties is a fundamental component of internal controls. It ensures that work responsibilities are segregated so that one individual does not control all critical stages of a process, either IT or financial related.

During our audit procedures, we noted the following:

- There were no assigned account managers (those that approve accounts) for information systems accounts;
- There were no established conditions for groups and their role membership as well as a delineation showing separation of duties;
- Users' access forms were not maintained to show approvals and roles assigned;

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- Although there was enough space to store the logs, audit logs were set to “overwrite” once they reached capacity, which creates/prevents investigations and audit follow-up in the event that an issue is identified;
- Audit logs were not being reviewed by authorized personnel on a prescribed basis; and
- A list of incidents being tracked was not provided; therefore, we were unable to ascertain whether NLRB tracks, documents, and reports potential incidents properly.

The Office of Chief Information Officer (OCIO) did not follow its own NLRB IT control policies AC-1, AU-1, IR-1, nor NIST SP 800-53 Revision 4, to assign account managers for information system accounts, establish conditions for group membership, maintain appropriate approval records and roles assigned for requests to establish accounts, and adequately implement appropriate audit log storage and audit log reviews.

Additionally, the OCIO did not provide documentation as requested for us to complete our audit procedures, which evidences their lack of tracking, documenting, and reporting potential incidents properly.

Security Management

Continuous monitoring of service organizations and complementary user entity controls (CUECs) not covered in the System and Organizational Controls (SOC1) report is important since these controls have not been tested in the SOC1 report. The user entity must and should evaluate those controls to ensure they are designed and operating effectively to ensure that financial data is not compromised and is accurate.

During our audit procedures, we noted the following:

- Continuous monitoring and/or controls analysis was not conducted for those controls not covered by the SOC1 report for OFF and Federal Personnel and Payroll System (FPPS) issued by the Department of the Interior.

NLRB did not have adequate controls in place to perform periodic assessments for controls not covered by the SOC1 report for OFF and FPPS. Additionally, NLRB has not documented policies and procedures to review the SOC1 reports and test CUEC from the SOC1 reports annually.

Configuration Management

Effectively monitoring and correcting known vulnerabilities is an important attribute of information security. Information systems should be scanned and updated in a timely manner to guard against vulnerabilities, missing patches, viruses, and other emerging threats that could potentially exploit the organization and financial data.

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During our audit procedures, we noted the following:

- Vulnerabilities found on Agency vulnerability scan reports were not effectively monitored and timely remediated or corrected. Reports received from the OCIO showed there were several medium findings that had not been remediated from one month to the next.

NLRB did not have adequate controls in place to monitor the status of vulnerabilities identified. The following criteria relates to the conditions identified above:

- National Institute of Standards and Technology (NIST) Special Publication 800-53, Revision 4, *Security and Privacy Controls for Federal Information Systems and Organizations*
- NIST 800-18, *Guide for Developing Security Plans for Federal Information Systems*, section 3.16
- GAO's *Standards for Internal Control in the Federal Government*, Principle 16 – Perform Monitoring Activities
- NLRB *Information Security Risk Assessment Policy*, No. RA-1 issued January 18, 2018
- NLRB's *Information Security Assessment and Authorization Policy*, No. CA-1 issued January 17, 2018
- NLRB's *Information Security Audit and Accountability Policy*, No. AU-1 issued March 6, 2018
- NLRB's *Information Security Incident Management Policy*, No. IR-1 issued October 12, 2017
- NLRB's *Information Security Access Control Policy*, No. AC-1 issued October 3, 2017

Without account managers it could be harder to identify the personnel who are authorized to approve information system user accounts. Furthermore, without proper documentation for conditions as it relates to groups and their role membership, and maintaining user access forms, there is an increased risk that users will be granted roles in excess of what they should have to perform their normal job duties. Lastly, this could create an environment where a user could potentially exploit NLRB's financial systems and data.

If audit logs are overwritten once the logs fill up, this could prevent subsequent investigations, as the audit log will have been deleted. Additionally, if audit logs are not reviewed, the Agency might not be able to detect and report suspicious activities that could lead to the lack of financial data integrity and adversely affect the financial statements.

By not ensuring the tracking and maintenance of respective incidents, the Agency could be ill prepared to manage and respond to future incidents that could potentially affect financial data.

Independent Auditor's Report on Internal Control

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By not performing periodic assessments for controls not covered by the SOC1, there is an increased risk of exploitation because specific controls are not being assessed and/or monitored by NLRB or a third-party provider, which could in turn lead to a lack of financial data integrity for NLRB.

By having vulnerabilities exposed to the agency and not remediated in a timely manner, there is the risk that adversaries can take advantage of those weaknesses and gain access to NLRB's data, which ultimately could lead to a lack of integrity and/or confidentiality of financial data for the agency.

Recommendations:

5. Ensure that there are account managers assigned (and documented) to all personnel so that users' access rights are approved by an authorized person at the Agency.
6. Document all users' access rights and their respective segregation of duties to ensure that as users are approved, they are not being assigned privileges in excess of what their job duties require.
7. Document and maintain user access request forms, showing approvals and roles assigned.
8. Ensure that the audit logs are moved to another storage medium so that the audit logs are always available if needed for investigative purposes.
9. Review, analyze and report potential suspicious activities in the audit logs (by authorized personnel) on a monthly basis.
10. Track and maintain a record of all information system security incidents.
11. Develop and implement policies and procedures to review the SOC1 reports annually.
12. Identify controls that are not covered by the SOC1 report for OFF and FPPS and ensure they are assessed at least annually.
13. Establish controls to monitor or track the status of vulnerabilities identified.
14. Establish or modify the policy for how timely deficiencies (high, medium, and low) need to be remediated. Best practices across other agencies remediate high vulnerabilities within one business day and medium vulnerabilities within 3-5 business days; therefore, NLRB should follow best practices.



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**Independent Auditor's Report on Compliance and Other Matters Based on an Audit of
Financial Statements Performed in Accordance with *Government Auditing Standards***

Inspector General
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB), which comprise the balance sheets as of September 30, 2018 and 2017, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended, and the related notes to the financial statements, and have issued our report thereon dated November 13, 2018. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 19-01, *Audit Requirements for Federal Financial Statements*.

The management of NLRB is responsible for complying with laws and regulations applicable to NLRB. We performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in OMB Bulletin No. 19-01, including the requirements referred to in the Federal Managers' Financial Integrity Act of 1982. We limited our tests of compliance to these provisions, and we did not test compliance with all laws and regulations applicable to NLRB.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the NLRB's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, and contracts, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests of compliance disclosed no instances of noncompliance or other matters that are required to be reported herein under *Government Auditing Standards* or OMB Bulletin No. 19-01.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of compliance and the results of that testing, and not to provide an opinion on the NLRB's compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the NLRB's compliance. Accordingly, this communication is not suitable for any other purpose.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Castro & Company, LLC

November 13, 2018
Alexandria, VA

NLRB Response to Audit Report

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of the Chief Financial Officer



November 13, 2018

TO: David P. Berry
Inspector General

FROM: Beth Tursell
Acting Chief Financial Officer

SUBJECT: Response to the NLRB 2018 Draft Internal Control Report

The purpose of this memorandum is to respond to the Office of Inspector General's (OIG's) Draft Fiscal Year 2018 Internal Control Report. As further discussed below, the Agency is committed to resolving, in a diligent and effective manner, the audit report's findings. In the Agency's view, these issues do not rise to the level of a material weakness although the Agency recognizes its responsibility to address all relevant concerns. Accordingly, we provide the following responses.

Recommendations

1: Perform detailed management quality control reviews over the processing of JVs, year-to-year account balance variances, and accrual estimates to ensure discrepancies are minimized and errors are timely corrected.

Response:

- The OCFO will continue to document processes and improve accuracy and timeliness of reporting obligation and accounts payable balances.

2. Refine and strengthen policies, procedures, and processes over JVs and PP&E to ensure transactions are adequately supported and recorded accurately.

Response:

- The OCFO will continue its practice of ensuring JVs are adequately supported and recorded accurately. The OCFO will implement controls to ensure evidence of review and approval by NLRB Management of PP&Es.

3. Ensure that reconciliations of the BMS balances to OFF and Treasury balances are completed, documented, and reviewed by management at a minimum on a quarterly basis.

Response:

- The OCFO will review policies and procedures to incorporate the quarterly review of BMS balances to OFF and Treasury balances.

4. Ensure reconciliations contain evidence of all appropriate reviews and approvals.

Response:

- The OCFO will continue its practice of ensuring evidence of review and approval by NLRB Management of reconciliations.

5. Ensure that there are account managers assigned (and documented) to all personnel so that users' access rights are approved by an authorized person at the Agency.

Response:

- The OCIO will review IT system access procedures for Agency managed systems. Information System owners will be documented, and account manager identified by the respective system owners.

6. Document all users' access rights and their respective segregation of duties to ensure that as users are approved, they are not being assigned privileges in excess of what their job duties require.

Response:

- OCIO will work with individual IT System owners to document account approval processes to include the separation of duties.

7. Document and maintain user access request forms, showing approvals and roles assigned.

Response:

- The OCIO will access the ability to centralize the request, documentation and recording of IT system access requests. Additional funding may be required to purchase "approver/reviewer" licenses as account managers and information system owners are added to approval processes per system.

8. Ensure that the audit logs are moved to another storage medium so that the audit logs are always available if needed for investigative purposes.

Response:

- The OCIO will review storage retention requirements for audit logs and provide sufficient storage. The OCIO will refine AU procedures to safeguard the storage of audit log data for investigative purposes.
9. Review, analyze and report potential suspicious activities in the audit logs (by authorized personnel) on a monthly basis.

Response:

- The OCIO will review audit logs for suspicious behavior on a monthly basis for analysis and reporting of suspicious activities.
10. Track and maintain a record of all information system security incidents.

Response:

- The OCIO will review Incident Handling, and Risk Strategy procedures to ensure system security incidents are documented.
11. Develop and implement policies and procedures to review the SOC1 reports annually.

Response:

- The OCIO will review policies and procedure to incorporate the annual review of vendor provided SOC1 reports.
12. Identify controls that are not covered by the SOC1 report for OFF and FPPS and ensure they are assessed at least annually.

Response:

- The OCIO will identify non-covered controls for OFF and FPPS based on the assessment of vendor provided SOC1 reports.
13. Establish controls to monitor or track the status of vulnerabilities identified.

Response:

- Subject to the availability of funding, The OCIO plans to purchase in-house tools for the monitoring and remediation of vulnerabilities. The OCIO will review potential vendor products to supplement DHS CDM activities.

14. Establish or modify the policy for how timely deficiencies (high, medium, and low) need to be remediated. Best practices across other agencies remediate high vulnerabilities within one business day and medium vulnerabilities within 3-5 business days; therefore, NLRB should follow best practices.

Response:

- The OCIO will revise Risk Management, and Incident Response procedures to include quantitative metrics for the remediation of vulnerabilities. Response times will be established based on the nature, risk, impact, and cost of remediation. The OCIO will revise procedures to remediate legitimate vulnerabilities dependent on criticality based on vendor and Federal guidance and in accordance with an organizational assessment of risk.

The Agency appreciates the significant work associated with these audits and the Agency remains committed to the continued refinement and improvement of processes, procedures, and policies to address the auditor's recommendations.


Beth Tursell, Acting Chief Financial Officer

Principal Financial Statements

National Labor Relations Board Balance Sheet

As of September 30, 2018 and 2017
(in dollars)

	FY 2018	FY 2017
Assets		
Intragovernmental:		
Fund Balance with Treasury (Note 2)	\$ 43,448,897	\$ 32,131,938
Advances and Prepayments (Note 4)	59,774	44,142
Total Intragovernmental Assets	43,508,671	32,176,080
Accounts Receivable, net (Note 5)	600,481	561,270
Advances and Prepayments (Note 4)	12,243	26,993
General Property, Plant, and Equipment, net (Note 6)	6,087,336	8,001,009
Total Assets	\$ 50,208,731	\$ 40,765,352
Liabilities		
Intragovernmental:		
Accounts Payable	\$ 1,010,586	\$ 968,370
Employer Contributions and Payroll Taxes Payable	1,571,250	4,996,992
FECA Liabilities	334,950	280,211
Total Intragovernmental	2,916,786	6,245,573
Accounts Payable	4,551,660	4,281,224
Federal Employee Benefits - FECA Actuarial Liability (Note 7)	2,422,305	665,017
Unfunded Annual Leave (Note 7)	13,204,349	13,709,025
Employer Contributions and Payroll Taxes Payable	5,979,961	3,045,088
Total Liabilities	29,075,061	27,945,927
Commitments and Contingencies (Note 16)		
Net Position		
Unexpended Appropriations	30,504,674	19,008,616
Cumulative Results of Operations	(9,371,004)	(6,189,191)
Total Net Position	21,133,670	12,819,425
Total Liabilities and Net Position	\$ 50,208,731	\$ 40,765,352

The accompanying notes are an integral part of the financial statements.

National Labor Relations Board
Statements of Net Cost
For the Years Ended September 30, 2018 and 2017
(in dollars)

	FY 2018	FY 2017
Program Costs		
Resolve Unfair Labor Practices		
Net Cost	\$ 251,776,211	\$ 258,803,391
Resolve Representation Cases		
Net Cost	27,944,055	31,627,976
Total		
Costs	279,720,266	290,431,367
Net Cost of Operations	\$ 279,720,266	\$ 290,431,367

The accompanying notes are an integral part of the financial statements.

National Labor Relations Board
Statements of Changes in Net Position
For the Years Ended September 30, 2018 and 2017
(in dollars)

	FY 2018	FY 2017
Unexpended Appropriations		
Beginning Balance	\$ 19,008,616	\$ 18,677,832
Budgetary Financing Resources:		
Appropriations received	274,224,000	274,224,000
Other Adjustments	(1,252,112)	(1,375,463)
Appropriations used	(261,475,830)	(272,517,753)
Total Budgetary Financing Sources	11,496,058	330,784
Total Unexpended Appropriations	\$ 30,504,674	\$ 19,008,616
Cumulative Results of Operations		
Beginning Balances	\$ (6,189,191)	\$ (4,644,446)
Budgetary Financing Sources:		
Appropriations used	261,475,830	272,517,753
Other	6,783	99,511
Other Financing Sources (Non-Exchange):		
Imputed financing	15,062,623	16,368,869
Other	(6,783)	(99,511)
Total Financing Sources	276,538,453	288,886,622
Net Cost of Operations	(279,720,266)	(290,431,367)
Net Change	(3,181,813)	(1,544,745)
Cumulative Results of Operations	(9,371,004)	(6,189,191)
Net Position	\$ 21,133,670	\$ 12,819,425

The accompanying notes are an integral part of the financial statements.

National Labor Relations Board
Statements of Budgetary Resources
For the Years Ended September 30, 2018 and 2017
(in dollars)

	FY 2018	FY 2017
Budgetary Resources		
Unobligated balance from prior year budget authority, net	\$ 6,306,237	\$ 9,879,913
Appropriations	274,224,000	274,224,000
Total Budgetary Resources (Note 14)	\$ 280,530,237	\$ 284,103,913
Status of Budgetary Resources		
New obligations and upward adjustments	\$ 272,431,239	\$ 277,450,230
Unobligated balance, end of year:		
Apportioned, unexpired accounts	3,034,382	916,478
Unexpired unobligated balance, end of year	3,034,382	916,478
Expired unobligated balance, end of year	5,064,616	5,737,205
Unobligated balance, end of year	8,098,998	6,653,683
Total budgetary resources	\$ 280,530,237	\$ 284,103,913
Outlays, Net		
Outlays, net	\$ 261,654,930	\$ 274,198,415

The accompanying notes are an integral part of the financial statements.

Notes to Principal Statements

Note 1. Summary of Significant Accounting Policies

A. Reporting Entity

The National Labor Relations Board (NLRB) is an independent federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. The NLRB's jurisdiction includes the U.S. Postal Service; but other government entities, railroads, and airlines are not within the NLRB's jurisdiction. The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. The NLRB does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices (ULP), by either employers, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes ULP charges before Administrative Law Judges (ALJ), whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the records of the NLRB in accordance with generally accepted accounting principles (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements*, revised as of July 30, 2018. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the federal government. These financial statements present proprietary and budgetary information.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the Agency's net position. Agency assets include both entity assets — those which are available for use by the agency — and non-entity assets — those which are managed by the agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded). A note disclosure is required to provide information about its fiduciary activities.

The Statement of Net Cost presents the gross costs of programs, reported by program and for the Agency as a whole.

The Statement of Changes in Net Position reports beginning balances, budgetary and other financing sources, and net cost of operations, to arrive at ending balances.

The Statement of Budgetary Resources provides information about how budgetary resources were made

available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, June 29, 2018.

The Agency is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of Certified Public Accountants (AICPA) as the entity to establish GAAP for the federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting standards, and (3) the United States Standard General Ledger (USSGL) at the transaction level. Since the Agency is not a CFO Act agency, it is not subject to FFMIA. The Agency uses the Department of Interior's financial management system and that system is FFMIA compliant. Thus, the Agency's financial management system complied with the requirements of FFMIA and produced records in accordance with USSGL at the transaction level.

The financial statements should be read with the realization that they are for a component of the United States Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without legislation that provides resources and legal authority to do so.

The accounting structure of federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to

the occurrence of an accrual based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of federal funds.

The information as presented on the Statement of Net Cost is based on the programs below:

ULP Cases are initiated by individuals or organizations through the filing of a charge with the NLRB. If the NLRB Regional Office believes that a charge has merit, it issues and prosecutes a complaint against the charged party, unless settlement is reached. A complaint that is not settled or withdrawn is tried before an ALJ, who issues a decision, which may be appealed by any party to the Board. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the law and the body of case law that has been developed by the Board and the federal courts.

Representation Cases are initiated by the filing of a petition by an employee, a group of employees, an individual or labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents, or in some cases continues to represent, a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency is to investigate the petition and, if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the NLRA.

All cases are assigned unique tracking numbers, with the letter "C" designating Unfair Labor Practices cases, and the letter "R" designating Representation cases. The percentage of new cases filed for each type of case drives the program breakout for financial reporting purposes. Please see chart below with the calculations for FY 2018 and FY 2017, through September 30.

	FY 2018	FY 2017
	Percentage	Percentage
C Cases (Unfair Labor Practices)	90%	89%
R Cases (Representation)	10%	11%
	100%	100%

C. Budgets and Budgetary Accounting

Congress annually adopts a budget appropriation that provides the NLRB with authority to use funds from the Department of the Treasury (Treasury) to meet operating expense requirements. The NLRB has single year budgetary authority and all unobligated amounts at year-end expire. At the end of the fifth year following the year of execution, all amounts not expended are canceled and returned to Treasury. Additionally, all revenue received from other sources must be returned to the Treasury.

Budgetary accounting measures appropriation and consumption of budget/spending authority and facilitates compliance with legal constraints and controls over the use of federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time an obligation to pay is made. Only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

D. Financing Sources

The NLRB receives funds to support its programs through annual appropriations. These funds may be used to pay program and administrative expenses, primarily salaries and benefits, space occupancy, travel, and contractual service costs.

For accounting purposes, appropriations are recognized as financing sources, and as appropriations used at the time expenses are accrued. Appropriations expended for

general property, plant and equipment are recognized as expenses when the asset is consumed in operations (depreciation and amortization).

E. Fund Balance with the Treasury

The NLRB does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by Treasury, and the Agency's records are reconciled with those of Treasury. Funds with Treasury represent the NLRB's right to draw on the Treasury for allowable expenditures.

In addition, funds held with Treasury also include escrow funds that are not appropriated but are fiduciary in nature. The fiduciary funds are not recognized on the Balance Sheet. See Note 3, Fiduciary Activities.

F. Accounts Receivable, Net of Allowance for Doubtful Accounts

Accounts Receivable typically consists of two types of debts: payroll-related debts due to the NLRB from Agency employees and debts due to the NLRB from third party sources for invitational travel. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year-end.

G. General Property, Plant and Equipment

General property, plant and equipment consist primarily of telephone systems, bulk purchases, computer hardware and software, and leasehold improvements.

Personal Property. Personal property costing \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Bulk purchases of large quantities of property that would otherwise fall under the individual capitalization threshold are capitalized if the total purchase is \$100,000

or more. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The useful life for this category is three to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

Real Property. Real property consists of leasehold improvements on GSA leased space which cost \$100,000 or more. Leasehold improvements are recorded as construction in progress until the Agency has beneficial occupancy of the space, and then the costs are moved to the Leasehold Improvements account for amortization over the remaining life of the lease.

Internal Use Software. Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the development cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The standard useful life for IUS has been established as three years, in order to most accurately match expenses with the time period in which the benefits are received from the software. The NLRB uses the straight-line method of amortization.

The Next Generation Case Management System (NXGen) project was a multiple year undertaking in which a large portion of the system was rolled out in FY 2011. This IUS project continues to include adjustments to the asset. IUS additionally supports systems such as e-Gov, E-filing, and provides the public with web-based access to NLRB data.

Internal Use Software in Development. Internal use software in development is software that is being

developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account and amortized accordingly, as described above.

H. Non-Entity Assets

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets. Non-entity assets, restricted by nature, consist of miscellaneous receipt accounts. The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act (FOIA) requests that must be transferred to the Treasury at the end of each fiscal year.

I. Liabilities

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. However, no liability can be paid by the NLRB absent an appropriation. Liabilities of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

J. Liabilities Not Covered by Budgetary Resources

Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity.

Intragovernmental

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or

paid by the NLRB as of September 30, 2018 and 2017, respectively.

Federal Employees Workers' Compensation Program

The Federal Employees Compensation Program (FECA) provides income and medical cost protection to covered federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by DOL, which pays valid claims and subsequently seeks reimbursement from the NLRB for these paid claims.

The FECA liability consists of two components. The first component is based on actual claims paid by DOL but not yet reimbursed by the NLRB. The NLRB reimburses DOL for the amount of the actual claims as funds are appropriated for this purpose. There is generally a two- to three-year time period between payment by DOL and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the actual claims paid by DOL and to be reimbursed by the NLRB.

The second component is the estimated liability for future benefit payments as a result of past events. This liability includes death, disability, medical, and miscellaneous costs. The NLRB determines this component annually, as of September 30, using a method that considers historical benefit payment patterns.

Due to the small number of claimants, the NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 84.3 and 86.7 years for male and female, respectively.

Accrued Annual Leave

Accrued annual leave represents the amount of annual leave earned by NLRB employees but not yet taken.

K. Contingencies

The criteria for recognizing contingencies for claims are:

1. a past event or exchange transaction has occurred as of the date of the statements;
2. a future outflow or other sacrifice of resources is probable; and
3. the future outflow or sacrifice of resources is measurable (reasonably estimated).

The NLRB recognizes material contingent liabilities in the form of claims, legal action, administrative proceedings and suits that have been brought to the attention of legal counsel, some of which will be paid by the Treasury Judgment Fund. It is the opinion of management and legal counsel that the ultimate resolution of these proceedings, actions and claims, will not materially affect the financial position or results of operations.

Contingencies are recorded when losses are probable, and the cost is measurable. When an estimate of contingent losses includes a range of possible costs, the most likely cost is reported; where no cost is more likely than any other, the lowest possible cost in the range is reported. This item will normally be paid from appropriated funds.

L. Unexpended Appropriations

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

M. Annual, Sick, and Other Leave

Annual and Sick Leave Program.

Annual leave is accrued as it is earned by employees and is included in personnel compensation and benefit costs. Each year, the balance in the accrued annual leave liability account is adjusted to reflect current pay rates. Annual leave earned but not taken, within established limits, is funded from future financing sources. Sick leave and other types of non-vested leave are expensed as taken.

N. Life Insurance and Retirement Plans

Federal Employees Group Life Insurance (FEGLI) Program.

Most NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain “basic life” term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government’s service cost for the post-retirement portion of the basic life coverage. Because the NLRB’s contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

Retirement Programs.

The NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went

into effect pursuant to Public Law 99-335. Most of the NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to 7 percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee’s basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. The maximum amount of base pay that an employee participating in FERS may contribute is \$18,500 in calendar year (CY) 2018 to this plan. Employees belonging to CSRS may also contribute up to \$18,500 of their salary in CY 2018 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2018 is \$6,000. For CY 2018, the regular and catch-up contributions may not exceed \$24,500. The sum of the employees’ and the NLRB’s contributions are transferred to the Federal Retirement Thrift Investment Board. For FERS employees, the Agency also contributes the employer’s share of Medicare.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employees government-wide, including the NLRB employees. The NLRB has recognized an imputed cost and imputed financing source for the difference between the estimated service

cost and the contributions made by the NLRB and covered CSRS employees.

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with SFFAS No.4, Managerial Cost Accounting Concepts and Standards for the Federal Government, included in the NLRB's financial statements as an imputed financing source.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits (FEHB) and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS No. 4, Managerial Cost Accounting Concepts and Standards for the Federal Government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future, and provide these factors to the agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

As of year ended September 30, 2018, the NLRB, utilizing OPM provided cost factors, recognized \$5,038,665 of pension expenses, \$9,998,886 of post-retirement health benefits expenses, and \$25,072 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$15,062,623 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM. In comparison, in FY 2017, the NLRB recognized \$5,426,278 of pension expenses, \$10,916,004 of post-retirement

health benefits expenses, and \$26,587 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$16,368,869 as an imputed financing source from OPM.

O. Operating Leases

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the GSA and commercial copier leases. NLRB leases all buildings through GSA. The NLRB pays GSA a standard level users charge for the annual leases, which approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, and it does not record GSA-owned properties as assets. The real property leases are for NLRB's Headquarters and Regional Offices, and the personal property leases are for Fleet vehicles and copiers.

P. Net Position

Net position is the residual difference between assets and liabilities and is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations are the net result of the NLRB's operations.

Q. Use of Management Estimates

The preparation of the accompanying financial statements in accordance with GAAP requires management to make certain estimates and assumptions that directly affect the results of reported assets, liabilities, revenues, and expenses. Actual results could differ from these estimates.

R. Tax Status

The NLRB, as an independent Board of the Executive Branch is a federal agency, and is not subject to federal, state, or local income taxes, and accordingly, no provision for income tax is recorded.

S. Subsequent Events

Subsequent events and transactions occurring after September 30, 2018 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditors' opinion also represents the date that the financial statements were available to be issued.

Note 2. Fund Balance with Treasury

Treasury performs cash management activities for all federal agencies. NLRB's Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2018 and September 30, 2017 consists of the following:

<i>(in whole dollars)</i>	FY 2018	FY 2017
Entity Fund Balance with Treasury	\$ 43,448,897	\$ 32,131,938
Non-Entity Fund Balance with Treasury	0	0
Total	\$ 43,448,897	\$ 32,131,938

Fund Balance with Treasury by Fund Type:

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years, which are not available to fund new obligations.

The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

Obligated and unobligated balances reported for the status of Fund Balance with Treasury do not agree with obligated and unobligated balances reported on the Statement of Budgetary Resources because the Fund Balance with Treasury includes items for which budgetary resources are not recorded, such as deposit funds and miscellaneous receipts (non-entity).

Status of Fund Balance with Treasury as of September 30, 2018 and September 30, 2017 consists of the following:

Fund Balance with Treasury by Availability:

<i>(in whole dollars)</i>	FY 2018	FY 2017
Unobligated Balance		
Available	\$ 3,034,382	\$ 916,478
Unavailable	5,064,616	5,737,205
Obligated Balance Not Yet Disbursed	35,349,899	25,478,255
Total	\$ 43,448,897	\$ 32,131,938

Note 3. Fiduciary Activities

The National Labor Relations Board, Escrow Account is a deposit fund presented in accordance with SFFAS 31, Accounting for Fiduciary Activities, and OMB Circular A-136, Financial Reporting Requirements. The fiduciary funds collected by NLRB and held in escrow represent funds that were collected as part of the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB collects the funds, and then distributes them to employees, unions, pension funds, or other discriminatees in the settlement. The NLRB has the option to invest funds in federal government securities, if the funds will remain in escrow

for a lengthy period. During FY 2018, no fiduciary funds were invested.

There exists a signed Memorandum of Understanding (MOU) between the NLRB and the Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the fiduciary fund account in Treasury. NLRB manages these funds in a fiduciary capacity and does not have ownership rights against its contributions and investments; the assets and activities summarized in the schedule below do not appear in the financial statements. NLRB's fiduciary activities are disclosed in this note.

Schedule of Fiduciary Activity
As of September 30, 2018 and 2017

<i>(in whole dollars)</i>	FY 2018	FY 2017
Fiduciary net assets, beginning of year	\$ 2,516,279	\$ 2,071,873
Fiduciary revenues	24,018,804	2,505,326
Disbursements to and on the behalf of beneficiaries	(19,105,194)	(2,060,920)
Increase (Decrease) in fiduciary net assets	4,913,610	444,406
Fiduciary net assets, end of year	\$ 7,429,889	\$ 2,516,279

Note 4. Advances

Intragovernmental

Intragovernmental Advances were paid to the Department of Transportation for the employee transit subsidy program.

Non-Federal

Non-Federal Advances were paid for postage meter funding.

Note 5. Accounts Receivable, Net

The FY 2018 intragovernmental accounts receivable is zero and the FY 2017 amount was zero.

<i>(in whole dollars)</i>	FY 2018	FY 2017
With the public		
Accounts receivable	\$ 685,067	\$ 640,865
Allowance for doubtful accounts	(84,586)	(79,595)
Accounts receivable, net	\$ 600,481	\$ 561,270

Note 6. General Property, Plant and Equipment

General property, plant, and equipment consists of that property which is used in operations and consumed over time. The table below summarizes the cost and accumulated depreciation for general property, plant and equipment.

<i>FY 2018 (in whole dollars)</i>	Asset Cost	Accumulated Depreciation / Amortization	Net Asset Value
Equipment	\$ 2,896,802	\$ 2,798,573	\$ 98,229
Construction in Progress	819,775	0	819,775
Leasehold Improvements	5,882,208	1,815,330	4,066,878
Internal Use Software (IUS)	35,605,934	34,503,480	1,102,454
Total Property, Plant and Equipment	\$ 45,204,719	\$ 39,117,383	\$ 6,087,336

<i>FY 2017 (in whole dollars)</i>	Asset Cost	Accumulated Depreciation / Amortization	Net Asset Value
Equipment	\$ 3,165,758	2,757,255	\$ 408,503
Construction in Progress	122,378	0	122,378
Leasehold Improvements	5,705,106	1,238,917	4,466,189
Internal Use Software (IUS)	35,493,985	32,490,046	3,003,939
Total Property, Plant and Equipment	\$ 44,487,227	\$ 36,486,218	\$ 8,001,009



Note 7. Liabilities Not Covered by Budgetary Resources

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of liabilities not covered by budgetary resources as of September 30, 2018 and September 30, 2017, is as follows:

<i>(in whole dollars)</i>	FY 2018	FY 2017
Liabilities Not Covered by Budgetary Resources		
Intragovernmental		
FECA - Unfunded	\$ 334,950	\$ 280,211
Total Intragovernmental	\$ 334,950	\$ 280,211
Liabilities with the Public		
Estimated Future FECA	\$ 2,422,305	\$ 665,017
Accrued Annual Leave	13,204,349	13,709,025
Total Liabilities Not Covered by Budgetary Resources	15,961,604	14,654,253
Total Liabilities Covered by Budgetary Resources	13,113,457	13,291,674
Total Liabilities	\$ 29,075,061	\$ 27,945,927

Note 8. Non-Entity Assets

Non-Entity assets represent miscellaneous receipts collected and related accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of non-entity assets as of September 30, 2018 and September 30, 2017, is as follows:

<i>(in whole dollars)</i>	FY 2018	FY 2017
Non-Entity Assets		
Fund Balance with Treasury	\$ 0	\$ 0
Accounts Receivable	0	0
Total Non-Entity Assets	0	0
Entity Assets	\$ 50,208,731	\$ 40,765,352
Total Assets	\$ 50,208,731	\$ 40,765,352

Additionally, NLRB received a remainder interest in Florida real estate valued at approximately \$46,000 as part of a ULP case settlement. This asset is not included in the table above.

Note 9. Cumulative Results of Operations

<i>(in whole dollars)</i>	FY 2018	FY 2017
FECA paid by DOL	\$ (213,567)	\$ (93,319)
FECA - Unfunded	(334,950)	(280,211)
Estimated Future FECA	(2,422,305)	(665,017)
Accrued Annual Leave	(13,204,349)	(13,709,025)
General Property, Plant and Equipment, Net	6,087,336	8,001,009
Other	716,831	557,372
Cumulative Results of Operations	\$ (9,371,004)	\$ (6,189,191)

Note 10. Intragovernmental Costs and Exchange Revenue

For the intragovernmental costs, the buyer and seller are both federal entities. The earned revenue is the reimbursable costs from other federal entities. The NLRB has the authority to provide administrative law judges' services to other federal entities. There is no exchange revenue with the public.

<i>(in whole dollars)</i>	FY 2018	FY 2017
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$ 55,658,126	\$ 56,355,119
Costs with the Public	196,118,085	202,448,272
Total Net Cost – Resolve Unfair Labor Practices	\$ 251,776,211	\$ 258,803,391
Resolve Representation Cases		
Intragovernmental Costs	\$ 6,177,366	\$ 6,887,075
Costs with the Public	21,766,689	24,740,901
Total Net Cost – Resolve Representation Cases	\$ 27,944,055	\$ 31,627,976
Net Cost of Operations	\$ 279,720,266	\$ 290,431,367

Note 11. Operating Leases

GSA Real Property. NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or rented by GSA from the private sector. The NLRB has OAs with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally-owned leases are included in years FY 2019 through FY 2023.

Rental expenses for operating leases for the period ended September 30, 2018 were \$22,656,352 for Agency lease space and \$2,202,406 for Agency building security. For FY 2017 the operating lease costs were \$22,495,903 and the Agency building security portion was \$2,510,967.

Future Space Lease Payments

<i>(in whole dollars)</i>	GSA Real Property Cost
Fiscal Year	
2019	\$ 22,744,689
2020	\$ 22,971,477
2021	\$ 22,901,367
2022	\$ 23,359,394
2023	\$ 23,826,582

GSA Fleet. The future fleet payments reflect the expense for 18 vehicles used for official NLRB business throughout the United States. Expenses for the fleet vehicles for the period ended September 30, 2018 were \$65,066; for FY 2017 the costs were \$121,711.

Future Fleet Lease Payments

<i>(in whole dollars)</i>	GSA Fleet Cost
Fiscal Year	
2019	\$ 100,000
2020	\$ 100,000
2021	\$ 103,000
2022	\$ 106,090
2023	\$ 109,273

Commercial Copiers. The commercial copier rental expense reflects lease contracts for copy machines located at the NLRB Headquarters and Field Offices. For FY 2018 the commercial copier yearly contract is \$453,838; for FY 2017 the cost was \$438,534.

Future Copier Lease Payments*(in whole dollars)*

Fiscal Year	Copier Lease Cost
2019	\$ 453,838
2020	\$ 233,136
2021	\$ 162,594
2022	\$ 162,594
2023	\$ 162,594

Note 12. Imputed Financing Costs

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2018 and 2017 consisted of:

(in whole dollars)

	FY 2018	FY 2017
Office of Personnel Management:		
Pension Expenses	\$ 5,038,665	\$ 5,426,278
Federal Employees Health Benefits	9,998,886	10,916,004
Federal Employees Group Life Insurance Program	25,072	26,587
Total Imputed Financing Costs	\$ 15,062,623	\$ 16,368,869

Note 13. Appropriations Received

The NLRB received \$274,224,000 in warrants for both fiscal years ended September 30, 2018 and 2017.

Note 14. Statement of Budgetary Resources

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the federal government. The total Budgetary Resources of \$280,530,237 as of September 30, 2018 and \$284,103,913 as of September 30, 2017, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. The amount of budgetary resources obligated for unpaid delivered and undelivered orders was \$35,349,356 for FY 2018 and \$25,477,713 for FY 2017. The NLRB's apportioned unobligated balance available at September 30, 2018 was \$3,034,382 and at September 30, 2017 was \$916,478.

Apportionment Categories of New Obligations and Upward Adjustments.

NLRB's new obligations and upward adjustments as of September 30, 2018 and September 30, 2017 by apportionment Category A and B are shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories. OMB does not require the Agency to separate its funding and therefore all obligations incurred were from one funding category.

(in whole dollars)

	FY 2018	FY 2017
New Obligations and Upward Adjustments:		
Direct	\$ 272,431,239	\$ 277,450,230
Total New Obligations and Upward Adjustments	\$ 272,431,239	\$ 277,450,230

Note 15. Reconciliation of Net Cost of Operations to Budget

For the Period Ended September 30, 2018 and 2017

(in whole dollars)

	FY 2018	FY 2017
Resources Used to Finance Activities		
Current Year Gross Obligations	\$ 272,431,239	\$ 277,450,230
Budgetary Resources from Offsetting Collections		
Spending Authority from Offsetting Collections	(124,776)	(88,779)
Recoveries of Prior Year Unpaid Obligations	(779,890)	(5,344,164)
Other Financing Resources		
Imputed Financing Sources	15,062,623	16,368,869
Total Resources Used to Finance Activity	\$ 286,589,196	\$ 288,386,156
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Change in Undelivered Orders	\$ (9,833,924)	\$ (1,307,427)
Current Year Capitalized Purchases	(111,216)	(165,806)
Revenues without Current Year Budgetary Effect		
Other Financing Sources Not in the Budget	(15,062,623)	(16,368,869)
Costs without Current Year Budgetary Effect		
Depreciation and Amortization	2,893,340	4,144,382
Bad Debt Expense	4,991	44,223
Disposition of Assets	6,783	99,511
Other Adjustments to Assets	(874,499)	0
Future Funded Expenses	1,307,351	(744,823)
Imputed Costs	15,062,623	16,368,869
Other Expenses Not Requiring Budgetary Resources	(44,202)	(24,849)
Other	(217,554)	0
Net Cost of Operations	\$ 279,720,266	\$ 290,431,367

Note 16. Commitments and Contingencies

In addition to future commitments discussed in Note 11, Operating Leases, NLRB is committed under obligations at year end for goods and services which have been received and not yet paid or for goods and services which have been ordered but not yet received. These are unpaid delivered and undelivered orders — See Note 14, Statement of Budgetary Resources.

The NLRB is involved in various lawsuits incidental to its operations. While the ultimate outcome of these matters is not presently determinable, it is the opinion of management that the resolution of outstanding claims will not have a materially adverse effect on the financial position of the NLRB.

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Other
Information



UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 12, 2018

To: Board and General Counsel

From: David Berry
Inspector General

A handwritten signature in dark ink, appearing to read "D. Berry", is written over the printed name and title.

Subject: Top Management and Performance Challenges

As part of the Performance and Accountability Report, the Office of Inspector General (OIG) is required by section 3516 of title 31 to summarize what the Inspector General considers to be the most serious management and performance challenges facing the Agency and briefly assess its progress in addressing those challenges. This memorandum fulfills that requirement. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge of the National Labor Relations Board's (NLRB or Agency) operations.

For the purpose of this report, an item can be noted as a management or performance challenge even though it is not a deficiency or within the control of the Agency. In our prior year's memorandum, we identified five management and performance challenges.

CHALLENGES

Manage the Agency

In prior reports, I categorized the challenges into specific items and provided a brief explanation of the specific issues. Two years ago, I decided that method was not capturing an overarching challenge that this Agency faces.

In the two prior reports, I explained that because of the technical expertise required to administer the enforcement of the National Labor Relations Act (NLRA), the NLRB tends to promote its employees to management rather than recruiting seasoned managers from outside the Agency. As a result, the NLRB's management team is dominated by attorneys and examiners. Those individuals are generally smart and well-intentioned public servants who time and again demonstrate a true commitment to enforcing the NLRA; however, they rarely have the opportunities to establish a broad array of management skills.

During this fiscal year, the challenge of managing the Agency has changed. In Fiscal Year (FY) 2018, the NLRB had a significant change in leadership with three Members serving as Chairman and two General Counsels. Unfortunately, the change in leadership was coupled with the loss of very senior and key Senior Executive Service personnel. New leaders view old problems with fresh perspectives and, in some instances, are now having to address management decisions that previously had been avoided. Effecting change and addressing legacy issues are always challenging, but doing so while rebuilding a management team is all the more difficult.

Manage the Agency's Financial Resources

Both the FY 2010 and FY 2011 audits of the financial statements contained a finding by the independent auditing firm that there was a significant deficiency in internal control. Although the findings were largely related to problems in the procurement process, our audit of end-of-the-year spending demonstrated that there was a lack of sound budgeting and planning processes that are essential to proper fiscal management.

In July 2012, the Board created the Office of the Chief Financial Officer (OCFO), implementing the final recommendation of the FY 2010 audit of the financial statements. That office now oversees the budget, procurement, and payment processes.

The creation of the OCFO was not a quick fix. The *Audit of the NLRB Fiscal Year 2014 Financial Statements* found both a material weakness and two matters that were each a significant deficiency in internal control. The *Audit of the NLRB Fiscal Year 2015 Financial Statements* found that the matter identified as a material weakness was not fully remediated and continued as a significant deficiency, but the other two matters were remediated. The *Audit of the NLRB Fiscal Year 2016 Financial Statements* found that the matter first identified in FY 2014 as a material weakness continued as a significant deficiency through FY 2016, and added a new matter as a significant deficiency. The *Audit of the NLRB Fiscal Year 2017 Financial Statements* found that one of the two matters that was a significant deficiency in internal control was fully remediated and the other one was remediated to the point that it was appropriate for the Management Letter.

In mid FY 2018, the Chief Financial Officer (CFO) position became vacant and an operational-side manager was designated as the Acting CFO. During the vacancy of the permanent CFO, we have not observed significant improvement in the management of the Agency's financial processes, and we continue to identify issues in the internal control environment involving the financial management of the Agency.

Manage the NLRB's Human Capital and Maintain the Agency's Institutional Knowledge

These two challenges are interrelated. The need to maintain a stable and productive workforce is key to the NLRB's ability to fulfill its statutory mission. Factors outside the NLRB's control that may directly affect its ability to maintain a stable and productive workforce include, but are not limited to, reduced or flat appropriations and the loss of key personnel through retirements.

In our audit work we have, over an extended period of time, observed the loss of institutional knowledge in management practices as new personnel take over key positions. In some circumstances when information about historical practices is available, the context regarding why the practice was developed has been lost with personnel changes. The challenge is to recruit qualified personnel who can improve management practices while understanding the NLRB's past practices.

The hiring freeze that was imposed in the second quarter of FY 2017 and the continual annual threats of a significant reduction in the NLRB's appropriation have made the management of human capital a Herculean task. We have observed that some offices are clearly understaffed and other offices are overstaffed. Employees have expressed to us that the level of stress and frustration in the workplace caused by staffing issues was a factor in their decision to leave. This situation feeds upon itself and perpetuates the human capital challenges.

In FY 2018, the Board and General Counsel began to address this issue by filling critical vacancies and offering early retirements to positions that could be eliminated or restructured. While those attempts are a start, there remain significant challenges in filling critical vacancies and reallocating personnel resources during a period of "level" funding while the personnel related costs increase. Layered upon that task is the natural instinct of the people to resist change, which obviously makes it all the more difficult to engage in comprehensive workforce planning.

Manage the Agency's Information Technology Security

The FY 2016 Federal Information Security Management Act (FISMA) review was the start of the change from reviewing what the Agency was doing to assessing the maturity of the Agency's information technology (IT) security processes. Our FY 2016 FISMA review noted our observation that a significant number of IT security procedures were not in place and that most of what the IT security staff was doing was on an ad hoc basis – the lowest level. During the *Audit of the NLRB Fiscal Year 2017 Financial Statements*, the auditors confirmed our observations. For the FY 2017 OIG FISMA review, the entire review was based upon assessing the maturity of the Agency's information security program. That review was completed in the first quarter of FY 2018 and found that four of the five IT security functions were at an ad hoc basis and that overall the maturity level assessment was "not effective." In FY 2018, we have observed some improvement with the development of

formal policies; however it is apparent that there remain gaps in the IT security procedures that need to be addressed to meet the basic IT security requirements.

Implement Audit Recommendations

In last year's Top Management and Performance Challenges memorandum, we reported that the Agency had 37 open audit recommendations. Since that time, we added 19 and we closed 8. At this time, there are a total of 48 open recommendations. The oldest open recommendations are from audit reports issued in FY 2015. A recommendation is not closed until we verify that the implementing action appropriately addressed the issue that necessitated the recommendation.

Summary of Audit and Management Assurances

I. Summary of Financial Statement Audit

Audit Opinion: Unmodified					
Restatement: No					
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
Lack of Information Technology Updated Policies and Procedures	1	0	0	0	1
Lack of Information Technology Contingency Plan and Testing	1	0	1	0	0
Lack of Quality Control Procedures Caused Financial Reporting and Accounting Discrepancies	0	1	0	0	1
Lack of Sufficient General Information Technology Controls and Monitoring	0	1	0	0	1
Total Material Weaknesses	2	2	1	0	3

II. SUMMARY OF MANAGEMENT ASSURANCES

Effectiveness of Internal Control Over Operations (FMFIA §2)

Statement of Assurance: Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

Compliance with Financial Systems Requirements (FMFIA §4)

Statement of Assurance: Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

Improper Payments Information Act

Pursuant to the Improper Payments Information Act (IPIA) of 2002 (Public Law No. 107-300), dated November 26, 2002, and amended on July 22, 2010 by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Public Law No. 111-204), and again in 2012 with the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (Public Law No. 112-248); Under OMB Circular A-123; Appendix C guidance, all agencies under the executive branch of the United States are required to comply with IPERIA.

The NLRB has only one program for budget purposes. For FY 2018, \$261,784,593 in disbursements were made, of which payroll, benefits and travel accounted for \$211,572,413, and \$33,867,259 was disbursed in the form of inter-governmental and miscellaneous payments. The NLRB paid \$16,344,920 to vendors, or about 6% of the total disbursements. Based on the Agency's current controls, systems and continuous monitoring efforts, the NLRB concluded that the Salaries and Expenses program is at low risk for improper payments.

The NLRB is committed to minimizing the risk of improper payments and we use a variety of system controls, separation of duties, and other procedures to reduce that risk and to promptly identify any improper payments that might occur. These controls are tested as part of the SSAE 16, A-123, and financial statement audit processes; they are also considered during the annual FMFIA process.

Given these controls, we estimate the improper payments rate to be at most 1.5 percent and the improper payments amount to be no more than \$3,926,769. This level is below the threshold established by the OMB and therefore does not represent significant improper payments. The NLRB has reasonable assurance that controls over financial and non-financial operations are sufficient. No additional reporting requirements are necessary.

Freeze the Footprint

The Agency leases all buildings under occupancy agreements with the GSA, and as such does not provide square footage to the Federal Real Property Profile (FRPP).

Do Not Pay (DNP) Initiative

The mission of the Treasury Do Not Pay (DNP) team is to “protect the integrity of the government’s payment process by assisting agencies in mitigating and eliminating improper payments in a cost-effective manner while safeguarding the privacy of individuals.” The NLRB echoes that sentiment and has made eliminating improper payments one of the Agency’s financial management priorities. The DNP portal is a multifaceted system that embraces resources from several agency subsystems i.e. Social Security Administration’s Death Master File, GSA’s System for Award Management (SAM) Exclusion Records as well as Treasury’s Treasury Offset Program (TOP). DNP

uses this network of systems in order to disseminate to agencies whom should or should not receive public funds in order to reduce or prevent the likelihood of improper payments.

In fiscal year 2018, the DNP portal vetted 10,126 payments for authenticity and validity. The number of payments made amounted to \$31,193,086 in disbursements that passed through DNP’s network of red flag indicating systems. As a result, DNP identified 1 payment totaling \$10.45 that matched because of a Death Master File (DMF) record match.

September 2017 – August 2018 *						
	Number (#) of payments reviewed for improper payments	Dollars (\$) of payments reviewed for improper payments	Number (#) of payments stopped	Dollars (\$) of payments stopped	Number (#) of improper payments reviewed and not stopped	Dollars (\$) of improper payments reviewed and not stopped
Reviews with DMF Public	10,126	\$31,193,086	NA	NA	0	\$0
Reviews with SAM Exclusions Public	10,126	\$31,193,086	NA	NA	0	\$0

**September 2017’s information was not available at the time the PAR was published last year. It was available after the PAR’s publication. Therefore, the information must be included in this year’s PAR.*

- 】 Payments reviewed for improper payments includes the total number of payments disbursed by the Agency through the PACER payment system minus any payments that were excluded from matching due to (1) a missing or unmatchable TIN (DMF only) or (2) a missing name.
- 】 Payments stopped is currently not applicable since the Do Not Pay matching and adjudication process is based on post payment results.
- 】 Improper payments reviewed and not stopped includes the total number of matches identified by the Do Not Pay Initiative that were adjudicated as proper by the Agency.

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Appendices



Appendix A

Acronyms

ABA	American Bar Association	FEVS	Federal Employee Viewpoint Survey
ADA	Antideficiency Act	FFATA	Federal Funding Accountability and Transparency Act
ADR	Alternate Dispute Resolution	FISMA	Federal Information Security Management Act
ALJ	Administrative Law Judge	FMFIA	Federal Managers' Financial Integrity Act
AMB	Acquisitions Management Branch	FPB	Facilities and Property Branch
CFO	Chief Financial Officer	FPDS-NG	Federal Procurement Data System – Next Generation
CPAO	Congressional and Public Affairs Office	FPPS	Federal Payroll and Personnel System
CWTSato	(Carlson Wagonlit) NLRB's travel Management Service	FRPP	Federal Real Property Profile
Data Act	Digital Accountability and Transparency Act	FY	Fiscal Year
DCIA	Debt Collection Improvement Act	GAAP	Generally Accepted Accounting Principles
DFR	Duty of Fair Representation	GPRA	Government Performance and Results Act
DHS	Department of Homeland Security	GPRAMA	Government Performance and Results Modernization Act
DMF	Death Master File	GSA	General Services Administration
DNP	"Do Not Pay" List	HCPO	Human Capital Planning Officer
DOJ	Department of Justice	IAA	Interagency Agreement
DOL	Department of Labor	IBC	Interior Business Center
EEO	Equal Employment Opportunity	IOC	Indicator of Compromise
EEOC	Equal Employment Opportunity Commission	IPERA	Improper Payments Elimination and Recovery Act
EVS	Employee Viewpoint Survey	IPERIA	Improper Payments Elimination and Recovery Improvement Act
FAA	Federal Arbitration Act	IPIA	Improper Payments Information Act
FAR	Federal Acquisition Regulation	ITSM	Information Technology Services Management
FASAB	Federal Accounting Standards Advisory Board	IUS	Internal Use Software
FCPIA	Federal Civil Penalties Inflation Adjustment Act	LOA	Letters of Agreement

LVER	Local Veterans Employment Representative Program	QR	Quick Response
MD&A	Management's Discussion and Analysis	SAM	System for Award Management
MOU	Memorandum of Understanding	SBA	Small Business Administration
NLRA	National Labor Relations Act	SEPM	Special Emphasis Program Manager
NLRB	National Labor Relations Board	SES	Senior Executive Service
NxGen	Next Generation Case Management System	TIC	Trusted Internet Connection
OA	Occupancy Agreement	TOP	Treasury Offset Program
OBIA	Oracle Business Intelligence Application	UCC	Unified Communications Contract
OBIEE	Oracle Business Intelligence Enterprise Edition	ULP	Unfair Labor Practice
OCFO	Office of the Chief Financial Officer	USPS	United States Postal Service
OCIO	Office of the Chief Information Officer	VERA	Voluntary Early Retirement Authority
OED	Office of Employee Development	VRA	Veteran's Recruitment Appointment
OEEO	Office of Equal Employment Opportunity	VSIP	Voluntary Separation Incentive Payments
OFCCP	Office of Federal Contract Compliance Programs	WH	White House
OGE	Office of Government Ethics	WHD	Wage and Hour Division
OHR	Office of Human Resources		
OIG	Office of Inspector General		
OLMS	Office of Labor Management Standards		
OMB	Office of Management and Budget		
OSC	Office of Special Counsel		
OSHA	Occupational Safety and Health Administration		
PACER	Payments, Claims and Enhanced Reconciliation		
PAR	Performance and Accountability Report		
PD	Position Description		

Appendix B

Glossary

Adjudicate: Formal judgment or decision about a disputed matter.

Adversarial: Of a trial or legal procedure in which the parties in a dispute have the responsibility for finding and presenting evidence.

Backpay: Payment for work done in the past that was withheld at the time, or for work that could have been done had the worker not been prevented from doing so.

Case: The general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case.

Charge: A document filed by an employee, an employer, a union, or an individual alleging that a ULP has been committed by a union or employer.

Collective Bargaining: Negotiation between organized workers and their employer or employers to determine wages, hours, rules, and working conditions.

Complaint: A document that initiates “formal” proceedings in a ULP case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of the hearing.

Compliance: The carrying out of remedial action as agreed upon by the parties in writing; as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or as decreed by the court.

Decisions: Data related to decisions by the Board and NLRB Administrative Law Judges.

Expungement: When a first time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, making the records unavailable through the state or Federal repositories.

Impact Analysis: Provides an analytical framework for classifying cases so as to differentiate among them in deciding both the resources and urgency to be assigned each case. All cases are assessed in terms of their impact on the public and their significance to the achievement of the Agency’s mission. The cases of highest priority, those that impact the greatest number of people, are placed in Category III. Depending on their relative priority, other cases are placed in Category II or I.

Injunctive Relief: A temporary remedy sought in case of egregious violations of the Act pending final action by the Board in which Counsel for the General Counsel asks a district court judge to issue an order requiring the charged party to cease and desist from engaging in violations of the Act and may also seek certain affirmative actions in order to return to status quo.

Injunctive Proceedings: The adjudicatory process by which Counsel for the General Counsel seeks injunctive relief, as described directly above, from a district court judge.

Interstate Commerce: In the U.S., any commercial transaction or traffic that crosses state boundaries or that involves more than one state. Government regulation of interstate commerce is founded on the commerce clause of the Constitution (Article I, section 8), which authorizes Congress “To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.”

Litigation: Data related to litigation by Board attorneys in

federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions.

Meritorious Unfair Labor Practice Charge: Charge allegations evidencing statutory violations.

“Nip-in-the Bud” Cases: Cases arising from allegations of unfair labor practices committed during union organizing campaigns.

Petition: A petition is the official NLRB form filed by a labor organization, employee, or employer. Petitions are filed primarily for the purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

Petitioner: The party who presents a petition to the court.

Prosecutorial: Acts related to the process of litigating against a charged party when meritorious charge allegations are found.

Protected Concerted Activity: The National Labor Relations Act (NLRA) protects employees’ rights to engage in protected concerted activities with or without a union, which are usually group activities (two or more employees acting together) attempting to improve working conditions, such as wages and benefits.

Remedies – Data related to remedies obtained to resolve unfair labor practices, including backpay and offers of reinstatement.

Reinstatement: To put back or establish again, as in a former position or state.

Representation Cases: Initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer.

Secret-ballot Elections: A voting method in which voter’s

choices in an election or referendum are anonymous, forestalling attempts to influence the voter by intimidation and potential vote buying.

Settlements: A resolution between disputing parties about a legal case, reached either before or after court action begins.

Sua Sponte: A Latin phrase describing an act of authority taken without formal prompting from another party.

Social Media: Various online technology tools that enable people to communicate easily via the Internet to share information and resources. These tools can encompass text, audio, video, images, podcasts, and other multimedia communications.

Status Quo: A Latin phrase meaning the existing state of affairs, particularly with regards to social or political issues.

Statutory: Required, permitted, or enacted by statute.

Taft-Hartley Act: The Labor Management Relations Act, better known as the Taft-Hartley Act (enacted June 23, 1947) is a United States federal law that restricts the activities and power of labor unions. The Taft-Hartley Act amended the NLRA, informally the Wagner Act, which Congress passed in 1935.

Temporary Injunction: A court order prohibiting an action by a party to a lawsuit until there has been a trial or other court action, the purpose of which is to maintain the status quo and preserve the subject matter of the litigation until the trial is over.

Unfair Labor Practice (ULP): An unfair labor practice is illegal conduct by either a labor organization or an employer that violates the National Labor Relations Act.

Union: An organized association of workers formed to protect and further their rights and interests.

Withdrawals: Case resolution resulting from a charging party or petitioner deciding to withdraw the filing of an ULP charge or representation case petition.

Appendix C

Historical Performance Measures for Goals 1 and 2

Close meritorious (prosecutable) unfair labor practices on compliance within 365 days of the filing of the unfair labor practice charge.

Year	Interim Goal	Actual Performance
FY 2009	75.5%	79.7%
FY 2010	80.0%	84.6%
FY 2011	80.2%	83.2%
FY 2012	80.3%	83.8%
FY 2013	82.0%	82.4%

Resolve all charges of unfair labor practice cases by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or court judgment within 120 days of the filing of the charge.

Year	Interim Goal	Actual Performance
FY 2009	68.5%	71.0%
FY 2010	71.2%	73.3%
FY 2011	71.2%	72.5%
FY 2012	72.0%	72.7%
FY 2013	72.0%	73.3%

Resolve questions concerning representation in all representation cases within 100 days from the filing of the representation case petition.

Year	Interim Goal	Actual Performance
FY 2009	81.0%	84.4%
FY 2010	85.0%	86.3%
FY 2011	85.0%	84.7%
FY 2012	85.2%	84.5%
FY 2013	85.2%	87.4%

Historical Performance Measures for Goals 3 and 4

FY 2014 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies

Objective 1: Initiative 1

- › The Division of Administration (DofA) established a Human Capital Planning Section (HCPS) to administer the Agency's human capital management program. The draft Plan containing human capital goals, objectives, and strategies is expected to be completed in the first quarter of FY 15.
- › Office of Human Resources (OHR) partnered with OPM's Human Resources Solutions to pilot "USA Performance", a newly developed automated web-based performance appraisal system tool. It is designed to streamline the manual performance management process and increase visibility and transparency in performance management process. The use of USA Performance aligns performance plans with strategic goals, and ensures compliance with Federal performance management regulations. The pilot began in June 2014, with performance of senior executives and the next phase will involve GS and prevailing grade employees.
- › OHR meets regularly with Headquarters and field managers to assist in collaborative efforts with employees and the unions on a variety of workplace issues such as maxiflex, telework, and performance management programs.
- › DofA's Security branch was successful in reducing the reinvestigation backlog to approximately 750 from 1,018. The Agency expects the office to remain on

target to complete the 20 percent goal, listed in the management strategies, next year.

- » The DoF's Office of Employee Development (OED) expanded Skillport training software; electronically organized its developmental resources for Field Agents, including instructor modules, videos narrative resources; developed prototypes and piloted user-friendly online training for board agents; provided teambuilding to consolidated regions; and presented a 12-hour course on the "Seven Habits of Highly Effective People" to new Regional directors and a 90 minute workshop on "Promoting a Culture of Personal Accountability" that dealt with how to motivate people to take ownership of their work, an important skill for managing teleworkers.

Objective 1: Initiative 2

- » OHR began developing a Quality Assurance and Quality Control Unit to assess and improve the accountability process. The following action steps will be taken as a result of OPM's hiring reform:
 - Evaluate current designated examining authority and merit promotion hiring timeframes;
 - Identify the impact of negotiated agreements on hiring timelines;
 - Analyze and recommend methods for measuring improvement in timeliness;
 - Develop a schedule to meet hiring timeliness;
 - Identify actions needed to address barriers;
 - Prioritize occupations within respective divisions;
 - Train OHR staff on all tools available through USA staffing.
- » OHR has begun working with stakeholders to standardize over 1,300 of the Agency's position descriptions (PDs).
- » The Agency's Office of Equal Employment Opportunity (OEEO) timely submitted the Agency's annual MD715 report for Fiscal Year 2013 to the EEOC, which provides a demographic analysis of the Agency workforce by gender, race, national origin, and disability, in all stages

of employee life (e.g., hiring, grade level distribution, training, promotions, separations).

- » OEEO also provided a State of the Agency report to senior leadership to assist with strategies and enhance the diversity of its workforce.
- » OEEO and OHR initiated a collaborative work group to develop a Strategic Recruitment Plan for the Agency. As part of the plan, OEEO posted to its web page recruitment resources for reaching out to diverse student populations of African American, Hispanic, Asian American and Pacific Islander, and Native American populations. It also sent out email communications to these resource organizations promoting recruitment through the Agency's Honors Attorneys program. OEEO is also developing the Special Emphasis Program Manager role for each of these populations, as well as for disabled employees and veterans, to enhance the Agency's outreach initiatives to these communities
- » The Agency hired a new Disability Coordinator, who maintains applications for applicants that have contacted the Agency to be considered for employment under the "Schedule A" Hiring Authority, and OHR plans to host a number of training presentations for managers and supervisors on "Schedule A" Hiring, as well as on the Selective Placement Program.

Objective 2: Initiative 1

- » DoFA's Security Branch made improvements to its webpages, such that employees can find a host of information on physical security, personnel security, continuity of operations, classes offered by Department of Homeland Security, and policies from the Interagency Security Committee, and OPM Federal Investigative Service. Further, an Administrative Policies and Procedures Manual (APPM) on Personnel Security was updated and published and one on Physical Security is in draft form.

- › DofA's Facilities and Property Branch (FPB) developed an extensive Communication Plan that continues to inform employees about the Headquarters relocation, including managing expectations related to the cultural transition to a reduced-space work environment, and it provided physical tours. The project, which is dubbed, "Total Workplace Solutions," also includes a web page devoted to all aspects of the new relocation including timing, neighborhood businesses, furniture, technology and other requirements.
- › In addition, the FPB established a Headquarters Space Advisory Committee, which includes representatives from all Divisions and both employee Unions, to communicate updates on the new Headquarter Space Initiative and keep employees throughout the workforce informed on the latest project information.
- › HCPS launched a Human Capital web page in order to provide a platform to distribute a wealth of information and guidance about NLRB's human capital planning efforts.
- › HCPS received and analyzed the 2013 Federal Employee Viewpoint Survey results and provided an executive level briefing to Senior Management and is in the process of doing the same with the recently published FY 14 FEVS results. .
- › OHR developed the Honorary Awards program, where a number of employees were acknowledged during an awards ceremony, and it implemented a regular schedule for providing service awards.

Objective 2: Initiative 2

- › OHR benchmarked other agencies to identify ways to improve the on boarding program, and, along with Senior Managers, revamped the Agency's on-boarding process.
- › OHR provided one-on-one and group instructions to managers to assist them in providing guidance in understanding their role in communicating

expectations to Agency employees on performance management.

- › The former Director of Administration produced a quarterly Significant Happenings Report to report the work of the employees within the Division to senior management, and planned a Division-wide Recognition Day to celebrate the work of the Division and foster camaraderie, which was attended by the General Counsel, Deputy General Counsel, Assistant General Counsel, and Board Members.

Objective 2: Initiative 3

- › The following policy statements were released to Board agents in 2014: Equal Employment Opportunity Policy Statement; Policy Statement on the Prevention of Unlawful Harassment, Including Sexual Harassment; Alternative Dispute Resolution (ADR) Policy Statement; and the Diversity and Inclusion Policy Statement.
- › The MD-715 was timely submitted electronically in first quarter of 2014 calendar year to the EEOC providing FY 13 information.
- › The NLRB offered Agency-wide diversity training, which was mandatory for managers and supervisors, on Transgender in the Workplace in 2012, made the sessions available on the OED website, and issued a related Agency-wide memo.
- › With encouragement from senior leadership, the OEEO, OHR, and OED have partnered to develop a more robust diversity and inclusion training program. In furtherance, of this goal, senior leaders and representatives from various divisions have attended and accessed external programs.
- › In 2003, the Agency established a mentoring program on the General Counsel-side for newly-hired and newly-transferred professionals and support staff in order to support the mandate that the Agency have workforce that reflects the diversity of our Nation. In

FY 2014, the General Counsel asked that the program be revamped and the Mentoring Committee is working on doing so, including exploring best practices in mentoring at other federal agencies.

- ▶ The OEE0 relies on the Agency's cadre of collateral duty Special Emphasis Program Coordinators (SEPCs) to assist the Agency in its efforts to build and maintain an inclusive work environment. OEE0 conducted four-one hour videoconference training sessions in 2013 and 2014. The training supports the SEPCs in carrying out their responsibilities and duties and also provides a forum to share ideas and best practices.
- ▶ OHR has educated and encouraged management to utilize the Local Veterans Employment Representative Program to recruit for various positions. As a result, the Agency has hired at least eight veterans through the program.

FY 2014 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Objective 1: Initiative 1

Measure:

- ▶ The Agency's enterprise case management system, Next Generation Case Management System (NxGen), was made to replace 11 separate legacy systems and integrate into a single unified solution that leverages multiple technologies.

NxGen presently manages:

Internal users	1,350
Cases	263,355 (+10%*)
Case Actions of the Agency	766,343 (+27%*)
Documents, images, and videos, each linked to its Action and Case	4,678,794 (+47%*)

* All percentages are year-over-year calculations

Measure:

- ▶ The Agency soon will complete the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, will be migrated into NxGen beginning in the first quarter of FY 2015.

Measure:

- ▶ In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. The pilot recently has been expanded to two document types for all Regions. To date, 2,101 documents have been sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.

[10/1/2013 – 9/30/2014]

Number of E-Filings Received	29,127 (+15%*)
Number of Documents Received	43,031 (+13%*)
Number of Board and ALJ Decisions E-Served	737
Total Number of parties E-Served Decisions	55,191 (+3%*)
Number of E-Deliveries of Case Documents	2,101 (new process)

* All percentages are year-over-year calculations

Measure:

- ▶ The NLRB is committed to achieving the goals set forth in the President's Open Government Directive. The three principles of transparency, participation, and collaboration inform current and future plans for the Agency's information systems. With the near complete implementation of the NxGen, the Agency is able to provide improved information regarding its cases and significantly increase the number and type of case

documents made available to the public. In FY 2014, the Agency also made substantial progress towards a new external search interface and public data warehouse that will continue to deliver on the goals of Open Government.

Number of NLRB Document Types Available for Public Access	197
Total Number of Case Documents Available for Public Access	346,109

Please see <http://www.nlr.gov/open/public-documents> for a list of the document types available to the public.

Objective 1: Initiative 2

Measure:

- » In FY 2013, the Agency made the decision to expand the capabilities of the Office 365 Suite and utilize the cloud-based SharePoint offering. The Office 365 SharePoint solution provides all of the necessary components of a technology service catalog and complements the existing Intranet. In FY 2014, the Agency's governance and development teams focused on streamlining business processes through forms automation with workflow and routing.
 - As an example of these efforts, and to support the Agency's new Collective Bargaining Agreement, the Administrative Systems team recently completed the development of and is piloting a comprehensive solution to automate the processes for requesting, routing and approval, and reporting for the following schedules: Telework, Alternate Work (e.g., Gliding Flex, Maxi Flex and 5-4-9), and Leave. Upon approval by a supervisor or manager, the requests are created as items on a shared Outlook calendar for each individual office so that all employees can determine where to contact someone if they are working, but not physically in the office. All approved items are then made available to the

individual office's timekeeper for filing, processing and record keeping. Aggregate reports are also available to HR, which will significantly reduce manual data calls that are performed each year in preparation for reports sent to the Office of Personnel Management (OPM).

Measure:

- » Currently, the Agency utilizes disparate networks for its data and video conferencing services and manages 52 legacy phone systems from different voice service providers in the Field and Headquarters. The segregation of data, voice, and video services results in an inefficient use of Agency resources and creates communication and collaboration silos within critical business processes. Additionally, the Agency's present communications infrastructure provisions remote access for certain business processes only to Agency laptops, with limited support for mobile and tablet devices.
- » The objectives of the Agency's Unified Communication and Collaboration (UCC) effort are to provide enhanced functionality to Agency staff while achieving cost savings through such strategies as consolidating networks and taking advantage of lower cost technical alternatives and contract vehicles. Specifically, the Agency is trying to create a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road. The Agency awarded a UCC contract on September 24 and the Agency expects the implementation to take between eight and 12 months. After the initial investments in the UCC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.

Measure:

- With the increasing requests for collaboration, the Agency embarked upon efforts to implement SharePoint team sites to manage the need for document collaboration, discussion forums, wiki pages, and site mailboxes. Team sites are being created for all departments and divisions so that each office will have a secure place to store documents, create conversations, receive email alerts when changes occur, and collaborate on work products. Additionally, individual team sites are being created to support the various needs of the Agency. For example, to assist with the reduction of printed materials for conferences, team sites were created to review/edit presentations and conference materials and then store all materials to be made available to the participants. Furthermore, the Agency is addressing the need for document collaboration by geographically dispersed employees by providing access to the Office Online applications. This allows multiple employees the ability to simultaneously work on Word, Excel and PowerPoint documents, which provides increased collaboration and avoids confusion with managing multiple versions of documents that then need to be merged together.

Objective 1: Initiative 2

Measure:

- All required reports to external regulatory bodies were prepared in accordance with established time lines.

Measure:

- OCFO has developed a formalized annual training plan for all allowance holders. During FY14, finance-related training was held as part of the Office Managers and Field Managers trainings. Topics included Oracle Federal Financial processes, eTravel processes, and Federal Travel Regulations.

Measure:

- The OCFO Budget office has worked closely with the program offices and NLRB Senior Leadership to develop a detailed budget spend plan which serves to inform NLRB management for decision making.

Measure:

- During FY15 OCFO Finance Office plans to communicate obligation status reports to program offices through an automated monthly email. The development of the report has been completed within FY14 and the automated email generation will begin in FY 15. This report will help program managers to monitor their budgets at a more detailed level.

Measure:

- The Contracting Officers as well as the purchase card holders utilize the General Services Administration's (GSA), Federal Strategic Sourcing Initiative (FSSI) in the ordering of supplies and services. By doing so, the NLRB has increased its utilization of strategic sourcing from a savings rate of 14.47 percent in FY13 to 18 percent. In FY14, the NLRB increased its utilization of strategic sourcing higher with a savings rate of 34 percent; yielding a savings of \$106,168.

Measure:

- As demonstrated in the chart below, the NLRB increased the percentage of contract awards to small, disadvantaged owned businesses from Fiscal Year 2012 to Fiscal Year 2013 in all categories. During fiscal year 2014, the NLRB awarded the Unified Communications contract almost \$2M to a large business which impacted the small business categories. The Acquisition Management Branch will focus on making small businesses the supplier of choice in FY 2015.

FISCAL YEAR	TOTAL SMALL BUSINESS	WOMAN OWNED	SMALL DISADVANTAGED	VETERAN OWNED
Fiscal Year 2012	31.3%	7.9%	12.3	3.9%
Fiscal Year 2013	34.2%	17.9%	7.4%	4.9%
Fiscal Year 2014	29.1798%	12.4208%	10.1716%	4.4219%

Objective 2: Initiative 1

Management Strategies:

- » The Agency formed an outreach committee, comprised of board agents from divisions, branches and offices throughout the Agency. The committee continues to explore new modes and methods to educate the public, particularly those, such as youth and immigrant populations, that may be unfamiliar with the Agency and the Act and may be more vulnerable to exploitation due to their lack of knowledge of workplace rights.
- » In order to educate more audiences through non-traditional outreach, particularly those prone to exploitation, the Agency is trumpeting successes and recent cases of interest, as well as including human interest stories, so that the public can more easily relate to the information being shared. The CPAO is issuing news releases of recent cases, such as Board and court decisions, settlement agreements, and cases involving injunctive relief or compliance.
- » The Agency is invigorating local relationships for joint outreach and local working group forums where there are regular meetings with board agents from other agencies to work on various joint projects/materials. These federal, state and local agencies include, but are not limited to, EEOC, local Human Rights Commissions, Wage and Hour, OSHA, Whistleblower, Unemployment Compensation, and Office of Special Counsel. Two Headquarters managers are tasked with facilitating quarterly roundtable discussions with Regional outreach coordinators to ensure sharing of best practices/materials. The Agency is also reviewing

MOUs entered into decades ago and re-establishing connections with counterparts.

- » As to Letters of Agreement (LOA), the Agency is continuing efforts to reach out to foreign embassies/ministries/consulates and finalize letters of agreement for education of workers and business owners. In FY 2013, the Agency executed a LOA with the Mexican embassy and selective consulates, and in FY 2014, with the Ministry of Ecuador. Efforts to parlay those national agreements into local agreements between Regions and consulates, and to provide materials to Regions for assistance with education per the LOA are ongoing.
- » The Agency is culling and editing current outreach materials so that Board Agents have presentations with a uniform brand for Powerpoints and other formats in a central repository for use nationwide.

Objective 3: Initiative 1

Measure:

- » Over the past year, the Chairman and General Counsel have jointly promoted several ethics program initiatives to all employees and visibly participated in the values-based training program presented in FY 2014. The training engaged employees in discussions of ethical decision making principles and considered how ethical decisions are made within the context of our own personal core values and those of the Agency. The training also stressed personal responsibility in the ethical decision making process.
- » The General Counsel and Chairman also increased the staff of the Ethics Branch to ensure that sufficient resources are devoted to the program to facilitate

effective program management and outreach to all employees.

- » The NLRB Ethics Staff have met with the Board Members and the General Counsel collectively and separately to discuss a range of government and legal ethics issues.
- » The NLRB's Designated Agency Ethics Official has full access to Agency leadership and can approach them for assistance when the need arises.
- » In addition, the combining of the NLRB's Legal Ethics Program with the Government Ethics Program has provided NLRB employees with a cohesive, comprehensive program, thus raising the visibility of the program among employees. Employees now know that they have one office where they can go with ethics questions and issues, where their questions will be addressed from the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

Measure:

- » The ethics staff was proactive in expanding the number of training products available to all NLRB employees. They developed a number of one-page, easy-to-read Job Aids designed to help employees identify potential government ethics issues and provide additional guidance where informational gaps might exist. The Job Aids focused on conflicts of interest, including both financial conflicts and appearance issues; the acceptance of gifts from outside sources; the acceptance from and the giving of gifts to coworkers; the Hatch Act; outside employment; the outside practice of law; and the government's 14 Principles of Ethical Conduct. The Chairman and General Counsel promoted the usefulness of the Job Aids and identified them as a valuable tool for promoting an ethical culture at the NLRB in a memo to all NLRB employees. Job Aids on legal ethics topics have been prepared as well.

- » The Ethics web page on the NLRB's Intranet was revamped and rebranded as the "Ethical Highway." Thru the web page, ethics guidance materials are readily available to all NLRB employees. Articles on ethics appear monthly in the NLRB's employee newsletter, the All Aboard, alternating between legal ethics topics and subjects involving the government's rules and regulations. Monthly tips on legal ethics ("On the Road with the Ethics Code") are issued to the NLRB's Field Offices, and each Region has an ethics coordinator who assists in promoting them.
- » The New Employees Ethics Orientation has been converted to an online module in the Agency's learning management system and is assigned to new employees as part of the on-boarding process. Completion of the module can be tracked within the system. This ensures that all new employees receive an orientation to the government's ethics rules and regulations and provides a brief overview of the screening wall that separates the adjudicatory and prosecutorial sides of the Agency. Forty-seven new employees were trained in FY 2014. The module has also been packaged as a refresher course for incumbent employees, which they can access anytime through the same system.
- » The Ethics Staff provided in-person briefings on both government and legal ethics to the Agency's summer student interns, student volunteers, and detailees, and will continue to provide briefings at Agency conferences where they can reach large, diverse audiences. In August 2014, an ethics presentation was provided at the NLRB Regional Management Conference in Washington, DC. During the latter portion of FY 2014, the Ethics Staff introduced two ethics training initiatives. In June, they began a new legal ethics training program for attorneys and field examiners in the NLRB's Field Offices that covers skip counsel issues and attorney-client privilege. During the course, Agency employees complete

a “Testing Your Knowledge” quiz to test their knowledge in these areas.

- » In September, the Ethics Staff launched a training campaign for all Agency employees on the benefits and pitfalls of using email in the NLRB’s casehandling process. This training is being presented in weekly broadcasts and uses a variety of delivery methods, such as webcasts, podcasts, and job aids, to convey information. The Chairman and General Counsel promoted the program to employees prior to the launch of the campaign which helped to raise awareness of the importance of the training. The training campaign began in September and will conclude in December 2014. In addition, each weekly segment will be posted on the “Ethical Highway” page of the NLRB Insider after its initial broadcast.

Measure:

- » As of September 30, 2014, 87 percent of ethics inquiries were resolved within 5 business days. Of the 557 inquiries received from November 14, 2013 through September 30, 2014, 447 required guidance memos that addressed the inquiry from the perspective of the government’s ethics rules and, for attorneys, within the parameters of their bar rules.

Measure:

- » As of September 30, 2014, 100 percent of the financial disclosure reports received were reviewed and certified within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

Measure:

- » The NLRB uses an electronic financial disclosure system, FDOOnline, for the filing and review of the Confidential Financial Disclosure Reports which are filed by designated employees within the Agency.

- » While FDOOnline contains a component for filing Public Financial Disclosure Reports (OGE Form 278), the NLRB’s Designated Agency Ethics Official decided to wait to require the electronic filing of public reports until after the Office of Government Ethics unveils the new electronic system it is currently testing. Until such time as that system is made available for use, Public Financial Disclosure Reports are still filed in paper copy, even though filers are encouraged to use the online, fillable version of the OGE Form 278 developed by the Office of Government Ethics.

Objective 3: Initiative 2

Measure

- » Responses to internal auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response. The OCIO responded completely and timely to internal audits and information requests, including:
 - Audit of the NLRB Fiscal Year Financial Statements
 - Audit of FY 2013 Sequestration – Preparation, Implementation, and Impact
 - Cloud Computing Audit
 - Federal Managers’ Financial Integrity Act (FMFIA)

Objective 3: Initiative 3

- » Responses to external auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response.
- » The CFO participated in the GAO’s Regulatory Cost Benefit Analysis (GAO 451043).
- » The OCIO responded completely and timely to external information requests, including:
 - Questions posed in the Office of Management and Budget Memorandum M-14-04, Fiscal Year 2013

Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management

- The quarterly requirements for FISMA, Trusted Internet Connection (TIC), and Senior Agency Official for Privacy (SAOP) reporting
 - Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
 - NARA's Annual Records Assessment and the OMB Records Directive (M-12-18) Report
- » The OCIO responded appropriately to external technology mandates, including:
- Having successfully consolidated its infrastructure, the Agency is taking full advantage of cloud computing's benefits (Cloud First, *Federal Cloud Computing Strategy*) to maximize capacity utilization, improve IT flexibility and responsiveness, and minimize cost. Current efforts include utilizing:
 - Microsoft's cloud-based, software and platform as services solutions, Office 365 and Azure for:
 - Email repositories and services; the Agency repurposed the nearly one million dollar investment in its email infrastructure to extend the lifespan of its NxGen on-premises infrastructure
 - Replacing its end-of-life collaboration platform with Microsoft's SharePoint solution
 - Supplanting its near end-of-life network attached storage and desktop backup with Microsoft's Office 365 One Drive for Business solution
 - Amazon's Elastic Compute Cloud to:
 - Host its NxGen case management development environment
 - Save approximately \$500,000 over the next 6 years by hosting its legacy Momentum financial data rather than accepting the proposal of the

Department of the Interior's (DOI) Interior Business Center (IBC)

- The ServiceNow cloud Information Technology Services Management (ITSM) platform, which the OCIO uses to be more transparent, provides Agency staff with multiple ways to get quality support, and as the technology enabler of its internal effectiveness initiatives
 - GovDelivery cloud services to deliver all case participant communications, including for its electronic services initiative.
- » The Agency was acknowledged for having achieved compliance with OMB's TIC Initiative, version 2.0. As such, it is one of a few small civilian agencies that have complied with this mandate

Objective 3: Initiative 4

Measure:

- » Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of seven days for requests received from October 1, 2013 to September 30, 2014. The Agency received 4,458 requests for this period and responded to 4,093 of those requests in 1-20 days. Thus, 91.81 percent of the FOIA requests were processed within the 20- day statutory time period.

Measure:

- » The Agency sought an extension of time to process a request beyond the 20-day period in 7.08 percent of the FOIA requests received during this time period.

Measure:

- » The Agency received 20 FOIA Appeals from October 1, 2013 to September 30, 2014. The average elapsed days to process the appeal was 22 working days. In 9 of the 20 FOIA appeals, a final determination was made within 20 working days. Two of the appeals received during this period were pending as of September 30, 2014.

FOIA centralization is underway and will be expanding in the coming months. Centralization of FOIA processing will ensure greater consistency and efficiencies in FOIA handling. In August, the NLRB's FOIA Branch hired a new Branch Chief, who has provided assistance towards full centralization of the processing of Regional FOIA requests.

FY 2015 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies

Objective 1: Initiative 1

- › The Office of Human Resources (OHR) collaborated with executive officials to refine and expand its performance management program. It held training sessions for Executive staff, Regional staff and Headquarters managers and supervisors on relevant areas of the performance management system. The training focused on the significance of establishing performance plans, providing timely mid-year progress reviews, ensuring that all employees are given appraisals, aligning performance plans with the Agency's strategic goals, and ensuring that performance plans hold employees accountable for achieving results appropriate to their level of responsibility.
- › A comprehensive Strategic Human Capital Plan is being developed.
- › OHR and the Division of Legal Counsel collaborate regularly to ensure adherence to Agency policies and collective bargaining agreements.
- › Management and union representatives successfully work on a Reasonable Accommodations Policy, which was approved by the EEOC.
- › OHR issued guidance that expounded on workplace flexibilities for childbirth, adoption, foster care and elder care.
- › OHR, on behalf of various NLRB organizational units, issued many recognition awards to employees during FY 2015, including length of service, project and retirement awards.
- › OHR held its annual Administrative Professional Day Recognition Ceremony on April 23, 2015 to honor the Agency's outstanding administrative professionals.
- › The Agency held its second annual Honorary Awards Program, which recognized eleven employees in a number of different categories.
- › The Agency developed and implemented an Agency-wide Cultural Enhancement Program, which will enhance the ability of our increasingly diverse workforce to better work together, and to better understand the cultural differences among the public we serve. The program was launched with holding an "all hands" meeting which featured internal and external speakers who addressed the importance of inclusion and civility to a productive workplace. This was followed by online interactive module and podcasts in which a diverse group of employees shared their life and work experiences, as well as videos and online forums for employees to continue to discuss these topics.
- › The Office of Employee Development (OED) also developed and rolled out online training materials, enabling Headquarters employees to better utilize Outlook 2013, Lync and Word 2010, and produced scenario-based videos on ethics topics.
- › OED updated the Agency's Management Training Program by developing components such as: enhanced individual development planning and mentoring; obtaining the skills needed for the next level of management; and a pre-supervisory program.
- › The General Counsel and the Deputy General Counsel addressed Regional and Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them on their achievements, and seeking suggestions for Agency improvements.

Objective 1: Initiative 2

- » OHR and the Office of Equal Employment Opportunity (OEEO) worked together on the Strategic Recruitment Committee and are developing a Strategic Recruitment Plan.
- » OHR routinely partnered with the Local Veterans Employment Representative Program (LVER) to recruit for commonly filled positions, and placed at least five veterans through this program this fiscal year.
- » The Agency regularly uses the Veteran's Recruitment Appointment (VRA) Special Hiring Authority to place disabled veterans.
- » OHR worked to bolster the integrity of its recruitment process and adherence to OPM regulations. It created a series of internal procedures and manuals that are used to correctly navigate the process. It worked diligently with OPM to redraft its Excepted Service and Pathways policies to ensure that adequate consideration is provided to viable candidates. Furthermore, in direct correlation to OPM's Hiring Reform and the 80-Day Hiring Model, OHR attained an average 74-day hiring rate from the beginning of the process to the on-boarding of the employee for FY 2015.
- » OHR implemented a process for applicants with disabilities (Schedule A) which includes a specific mailbox for these applications, retention for 30 days, and focused review when a new vacancy arises in the Agency. If an applicant's qualifications prove to be a match for the job, that information will be forwarded to the hiring manager for further consideration. Presently, applicants are made aware of the program through Agency vacancy announcements on USAJobs and OPM's website.
- » The Agency continued to utilize USAJobs in announcing vacancies to a broad category of applicants, including veterans and persons with disabilities.
- » OHR entered into a Memorandum of Understanding with the Department of Veteran Affairs to participate

in the "VA for Vets Program," in order to process non-competitive hiring actions for veterans and to take part in the in "Feds for Vets" initiative.

Objective 2: Initiative 1

- » Facilities and Property Branch (FPB) continued its extensive Communication Plan to keep Headquarters staff informed on matters related to the relocation of the Headquarters facility.
- » Following the move, FPB implemented a practice requiring FPB employees to courtesy copy all branch employees on building related requests to ensure that multiple staff are not working on the same task. This practice of sharing information has also resulted in staff feeling more included and aware of work matters transpiring within the branch.
- » The Security Branch continued to issue its customer feedback questionnaire, soliciting information to ensure that customer assistance is timely and professional.
- » OHR improved communications by distributing numerous documents and notifications via its Ask HR Program.
- » The Agency analyzed the 2014 Federal Employee Viewpoint Survey results and is implementing best practices and strategies for strengthening employee engagement and organizational performance through focused leadership and increased communication.
- » In response to the Federal Employee Viewpoint Survey results from FY 2014, Agency managers developed action plans that included: greater transparency, sharing of information, and solicitation of employee input.
- » Guidance information on Employee Viewpoint Survey (EVS) action planning, and best practices involving effective leadership, communication, and engagement, was posted to the Human Capital Planning internal web page.
- » The Human Capital Planning Officer (HCPO) developed a structured communication plan to increase employees' awareness of the EVS. The response rate to

the 2015 EVS increased by 15 percent and there was a 4 percent increase employee engagement scores and a 5 percent increase in global satisfaction scores.

Objective 2: Initiative 2

- › OHR met with incoming Honors Attorneys to seek their feedback on the onboarding process, and how it could be enhanced and improved.
- › Training was provided to managers/supervisors on the appraisal process, including how to write performance appraisals, performance management requirements, and their role in communicating expectations to Agency employees on performance management protocols and processes. The training highlighted the importance of getting employees involved in creating their performance plans and having regular feedback discussions with employees.
- › The Congressional and Public Affairs Office issued news releases on case successes.
- › The General Counsel and the Deputy General Counsel addressed Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them in their achievements, and seeking suggestions for Agency improvements.
- › Significant organizational accomplishments are also regularly highlighted to all staff in the Agency newsletter.

Objective 2: Initiative 3:

- › OEEO collaborated with OED and the Division of Operations-Management to design and implement a foundational and ongoing diversity and inclusion training program for all Agency employees in alignment with Executive Order 13583.
- › OHR continues to provide training to Agency hiring managers on special hiring authorities, including Schedule A, in alignment with Executive Order 13548.

- › The Management Directive "MD715" is an affirmative EEO program by which federal agencies can assess, identify deficiencies and conduct barrier analysis of obstacles to equal employment opportunity and develop ongoing action plans to correct the self-identified deficiencies and work collaboratively to remove identified barriers. The NLRB submitted its report in March 2015 to the EEOC.
- › Agency SES Leadership participated in external diversity and inclusion training.
- › OEEO prepared four policy statements that were adopted and issued by Agency leadership on 1) Agency EEO Policy; 2) Statement on the Prevention of Unlawful Harassment; 3) Agency Statement Promoting Alternative Dispute Resolution; and 4) Diversity and Inclusion Policy Statement.
- › OEEO partnered with OHR to incorporate language describing specific standards for inclusion in supervisors' and managers' performance appraisals to measure management accountability on building and maintaining an inclusive work environment.
- › The General Counsel's Mentoring Workgroup analyzed the Agency's existing mentoring program and made recommendations on how mentoring can be further developed as a tool to maintain a diverse workforce. In response to the General Counsel's request, the workgroup investigated mentoring models at other federal agencies and their best practices for implantation.
- › OEEO designated staff as Special Emphasis Program Managers (SEPMs) responsible for developing program initiatives that enhance employment opportunities for specific demographic populations and tools to support employee affinity groups.
- › OEEO supports programming initiatives for the Agency's cadre of collateral duty Special Emphasis Program coordinators.

FY 2015 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Objective 1: Initiative 1:

Measure:

- › The Agency completed the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, was migrated successfully into NxGen in September. NxGen was designed and implemented to replace 11 separate legacy systems and integrate them into a single unified solution that leverages multiple technologies. This was the most comprehensive technology project undertaken at the NLRB, and its success has been essential to the Agency's mission.

NxGen presently manages:

Internal users	1,350
Cases	286,117
Case Actions of the Agency	876,076
Documents, images, and videos, each linked to its Action and Case	6,050,259

Measure:

- › In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. In FY 2015, 781 documents were sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.
- › On April 14, 2015, the Agency expanding its electronic filing program to enable constituents to E-File charges and petitions, the two initiating documents for the Agency's cases. The Agency has received 3,098 electronically filed charge and petitions from the launch of the new service through the end of the fiscal year.

Over the course of the fiscal year, the Agency received 58,662 documents of all types through its E-filing program and electronically delivered 3,422 documents to nearly sixty-thousand parties.

Measure:

- › The NLRB has counted millions of votes, investigated hundreds of thousands of unfair labor practice charges, and issued thousands of decisions. The numbers tell an important part of the Agency's story. Making what we do accessible to the public is an important part of the NLRB's mission. For example, the total number of case documents available for public access was 692,456, including Tally of Ballot information. This data is downloadable for analysis at <https://www.nlr.gov/news-outreach/graphs-data>.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the document types available to the public.

Objective 1: Initiative 2:

Measure:

- › Through FY 2015, the Administrative Systems (AS) team actively sought to develop automated solutions to streamline Agency processes.
- › The AS team completed a development effort to streamline the enrollment and management processes for the Voluntary Leave Bank. Dynamic reporting was also delivered to the managers and committee to provide aggregate statistics on many aspects of the system.
- › The AS team also developed a workflow process for authoring, routing and editing, approving and publishing of documents. This repeatable process will allow groups of users to store documents centrally in a secure authoring library, allowing documents to be finalized and then published to a separate location for consumption by a larger audience.

- › The AS team completed a development effort for OHR involving organizing and categorizing all positions and PDs within the Agency, modifying the PD library, assisting the OHR team with the creation of a set of standardized PD, and developing a streamlined process for OHR and Agency supervisors / managers to update all PDs every three years.
- › The AS team completed a development effort and migration of content and documents into a SharePoint site for all continuity of operations (COOP) members. Authors can now create, edit, route and receive approval for yearly COOP plans, and all COOP documents are now available at any time and may be accessed remotely.

Measure:

- › The Agency awarded its Unified Communications (UC) contract on September 24, 2014, and now expects the implementation to take up to 20 months. After the initial investments in the UC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.
- › The first priorities were to upgrade networks in the Agency's Field Offices and two existing datacenters, and to add network connections to its two new voice datacenters and new Headquarters. These changes add significant bandwidth to the Field Offices, are based on a new, more modern networking technology, and provide greater redundancy to our critical infrastructure. Forty Field Offices are now live on the new network, as are the two existing datacenters, one of the new voice datacenters, and the Agency's Headquarters.
- › All employees in Headquarters now use Skype for Business (SfB) for voice calls, voicemail and instant messaging, as the OCIO deployed the necessary Microsoft Office software and delivered over 775 new unified communications devices.

- › OCIO and Operations Management are in the process of planning the SfB deployment to the Field Offices.

Measure:

- › The AS team continued to build team sites, on request, for geographically dispersed employees to collaborate using Office Online applications, SharePoint lists and discussion forums. Enhanced capabilities continue to be added to allow for user-based filtering of content and more granular management of permissions for documents.
- › The AS team completed a development effort for OHR, creating an "Ask HR" knowledge base, which consists of answers to common questions, and if no information is present, a workflow capability will allow a new question to be submitted, routed, and ultimately, become part of the knowledge base.
- › The AS team also completed a development effort for the Office of the Chief Financial Officer (OCFO), creating an "Ask the CFO" knowledgebase, which consists of information related to the Acquisitions Management, Finance and Budget branches.

Objective 1: Initiative 3:

Measure:

- › Required reports to external regulatory bodies were prepared in accordance with established time lines.

Measure:

- › OCFO held monthly meetings with Contracting Officers and Contracting Officer Representatives (COR's) to discuss unliquidated obligation amounts, monitor burn rates, and request funding increases and deobligations.

Measure:

- › OCFO continued to develop a formalized annual training plan for all allowance holders. During FY 2015, finance-related training was incorporated during the

monthly obligation monitoring meetings, to include COR's who recently on-boarded with the Agency.

Measure:

- » The Finance Branch hosted a training session for CORs and provided a tracking tool to enable increased accuracy and timeliness of reporting burn rates, unliquidated obligation amounts, request for increased funding, and request for de-obligation of funding.
- » The Budget Branch worked closely with the program offices and senior leadership to develop a detailed budget spend plan, which is a living document of estimates and actual amounts and is updated monthly on the prior months execution.
- » The Budget Branch has developed several tools for various budget execution line items to monitor timely obligation and liquidation of funds, such as monitoring GSA rent charges, individual training requests, and mass transit benefit funding levels. Some budget lines have demonstrated variable spending cycles during the year, which requires additional training to program managers on the importance of monitoring those cycles to ensure funding requests cover the requirements.

Measure:

- » The Acquisitions Management Branch (AMB) provided training to Purchase Card Holders regarding electronic submission of monthly statements, and provided guidance on purchase card user registration via the Citibank portal.
- » AMB also provided monthly and quarterly reports to the Associate General Counsel of Operations- Management, which provided greater insight and transparency on purchasing habits of field offices that it oversees.

Measure:

- » The NLRB has increased the percentage of contracts awarded woman-owned and small disadvantaged business categories. With AMB's focus on small

businesses as the suppliers of choice, continuing to increase the number of awards to small businesses is achievable.

Management Strategies

Objective 2: Initiative 1:

Immigration Population

- » The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.
- » The Agency provided direct outreach to immigrant populations by:
 - Participating in Labor Rights Week activities
 - Speaking in Spanish and other languages at events organized by the consulates or other community groups to educate the public about the rights afforded under the NLRA
 - Holding news conferences to disseminate information helpful to immigrant communities
 - Participating in interviews on Spanish-language radio stations
 - Staffing phone banks to respond to inquiries from immigrant populations
 - Staffing booths at informational fairs
 - Responding to inquiries from individuals who seek consular services
- » The Agency has joined with other federal agencies to educate the public by:
 - participating in the Vulnerable Workers Project
 - participating in numerous "listening sessions" with those from the Asian American and Pacific Islanders Community
 - Other Agency activities include:
 - ▷ meeting with foreign labor and business representatives to provide information about

employee rights under the NLRA and NLRB processes

- ▷ meeting with members of the Commission on Human Relations to provide an overview of NLRA rights
- ▷ making presentations about the NLRA to officials of the French, Colombian, Spanish, and German embassies
- ▷ speaking at naturalization ceremonies to new citizens from approximately 35 countries about rights they have under U.S. labor laws

Youth

- 】 The Agency led discussions for high school and middle school classes in English and Spanish concerning the development of the NLRA and the New Deal, as well as the workers' statutory rights and the Board processes.
- 】 The Agency held mock trials for schools to demonstrate how an unfair labor practice trial is conducted.
- 】 The Agency engaged in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers.
- 】 The Agency signed an MOU with the Ministry of Foreign Affairs of the Republic of Colombia. Various Regional offices also held local signing ceremonies with local Colombian consulates, with follow-up outreach sessions.
- 】 The Agency partnered with DHS, DOL (WHD, OSHA and OFCCP), OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.
- 】 The Agency presented at the national EEOC EXCEL Conference in Washington, DC, on concerted activity in social media
- 】 DOJ's Office of Special Counsel hosted two webinars for NLRB field personnel to covering the intersection of the NLRA and immigration law.
- 】 Internal Agency deliberations occurred concerning effective outreach methods, including targeting specific audiences through the use of twitter, You Tube, Facebook, and news aggregators.
 - Since its release in August 2013, the NLRB app has been downloaded 19,296 times
 - The Agency implemented a Sharepoint site available to all of its outreach officers. This site includes a centralized area for collecting outreach presentation materials and a discussion board for addressing outreach inquiries
 - The Agency maintains a link on its public website for outreach requests, which are routed to the appropriate Region
 - The Agency has inserted QR codes in its correspondence to direct the public to our website.
 - More Regional Offices are considering producing newsletters in electronic format for delivery through GovDelivery
- 】 Outreach sessions for veterans and employee advocate organizations were held explaining Protective Concerted Activity, in particular.

Objective 3: Initiative 1:

Measure:

- 】 The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete our annual ethics briefing. This year's briefing served as a reminder to our leadership of all the available ethics training products.
- 】 The "Braking Bad Email Habits" training series emphasized that Agency employees should use their government email in a way that complies with government and legal ethics rules, and avoids the disclosure of confidential case-related information. A related memo was sent to all field professionals to encourage those that had not yet reviewed the material to do so as it was an effective learning tool.

- › The Ethics Office provided general ethics guidance to Board Members regarding the use of private social media accounts while serving as a Member of the Board, and met with the Deputy General Counsel, the Chief of Staff to the Chairman, and others to offer guidance in identifying potential conflicts of interest in an administrative program.
- › At the request of the General Counsel, the Ethics Office developed and delivered a training session on Civility during the Attorney Trial Training and presented a similar session to Headquarters staff.
- › The Ethics Office helped establish a reporting process that would ensure that newly hired and newly promoted employees receive required ethics training and complete required financial disclosure reports (as appropriate) in a timely manner.

Measure:

The Ethics Office continued to seek out opportunities to educate Agency employees about their ethical obligations.

During FY 2015 the following was provided:

- › A conclusion to the "Braking Bad Email Habits" series that covered the ethical use of government email.
- › A Skip Counsel and Attorney-Client Privilege training program was presented to nine Regional Offices.
- › Monthly distribution of the "On the Road with the Ethics Code" Job Aids that provide timely legal ethics information to all board agents.
- › Monthly Agency newsletter articles. These articles covered, where to find government and legal ethics information on the Agency website, how to navigate gift giving during the holiday season, and provided real-life examples of the consequences of violating criminal conflict of interest statutes.
- › Ethics social media guidance for distribution to the Presidential Appointees.

- › The redistribution of a Hatch Act job aid to serve as a reminder about partisan political activity.
- › Presented legal ethics topics at two attorney conferences co-sponsored by the NLRB and assisted in planning the ethics programming for a conference.
- › Provided ethics briefings to newly appointed Regional Directors.
- › Distributed one-page Job Aid covering Seeking Other Employment.
- › Partnered with the OED to begin development of two legal ethics training programs for online/on-demand distribution to all legal professionals.
- › Developed and presented a training session on Civility. This program was offered to attendees at the Trial Training in August and to professionals in Enforcement Litigation, CCSLB, and the Washington Resident Office.
- › Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as "prejudging" a case, and lead to requests for recusal.

Measure:

- › As of September 30, 2015, the Ethics staff received 622 inquiries and 87.7 percent were resolved within 5 business days.

Measure:

- › As of September 30, 2015, 100 percent of the financial disclosure reports submitted were reviewed within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

Measure:

- › Ethics staff rolled out the Office of Government Ethics (OGE) electronic filing system to all filers of the OGE 278. This included:
 - Meeting with OGE project managers
 - Attending user and administrator training sessions
 - Completing systems and user testing to ensure that NLRB employees would be able to use the system via the NLRB network and agency provided laptops
 - Finalization of NLRB Filer training materials to include: job aids, user guide, demonstration videos, and online training module
 - Creation of 278e Integrity webpage on the NLRB Insider where all training materials are archived
 - Live training sessions on how to file your 278e in Integrity for the first time

Objective 3: Initiative 2:

- › The OCIO responded timely to internal audits and information requests including:
 - Audit of the NLRB Fiscal Year Financial Statements
 - Fiscal Year 2014 Review of Internal Controls (FMFIA Survey)
- › The OCFO submitted timely Corrective Action Plans as required in response to the Fiscal Year 2014 Financial Statement Audit and also timely prepared a corrective action plan for OIG Travel Audit OIG-AMR-75-15-02. The actions that were taken and submitted to remediate recommendations found in Audit OIG-AMR-65-11-03 "Purchase Cards" were reviewed by the OIG.

Objective 3: Initiative 3:

The OCIO responded timely to external information requests including:

- › Questions posed in the Office of Management and Budget Memorandum M-15-01, Fiscal Year 2014-2015

Guidance on Improving Federal Information Security and Privacy Management Practices

- › Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
- › NARA's 2014 Records Management Self-Assessment
- › FY 15 Q1 Federal Information Security Management Act (FISMA) Data Call
- › Trusted Internet Connection (TIC) POA&M February 2014 Data Call
- › FY 15 Q2 Federal Information Security Management Act (FISMA) Data Call
- › Multiple security- and privacy-related ad hoc data calls, including for MS15-011 software "bug" and Indicators of Compromise (IOCs) related to OPM's personnel systems data breach.

Objective 3: Initiative 4:

Measure:

- › Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of fourteen days for requests received from October 1, 2014 to September 30, 2015. The Agency received 4,644 requests for this period and responded to 3,543 of those requests in 1-20 days. Thus, 78.34 percent of the FOIA requests were processed within the 20-day statutory time period.

Measure:

- › The Agency sought an extension of time to process a request beyond the 20-day period in about 20 percent of the FOIA requests received during the fiscal year.

Measure:

- › The Agency received 24 FOIA Appeals from October 1, 2014 to September 30, 2015. The average elapsed days to process the appeal was 24 business days.

FY 2016 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies

Employee Development

- › The Office of Human Resources (OHR) continued its partnership with the Office of Personnel Management (OPM) on the implementation of USA Performance, a new performance management reporting system.
 - OHR issued a memorandum titled Performance Management Validation Cycle to all Agency employees to inform that all management officials had to complete a Performance Management Validation Spreadsheet certifying that they had issued properly executed performance plans to all of their employees.
 - OHR completed a data validation, which showed that more than 86 percent of employees were issued properly executed performance plans. OHR's goal of 100 percent execution of performance plans will be achieved with the full implementation of USA Performance in June 2017.
- › The Office of Employee Development (OED) developed online content for legal writing and provided legal writing coaching for Headquarters employees.
- › OED is updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance released by OPM on September 28, 2015.
- › The Security Branch worked with OED to release the 2016 Continuity of Operations Training for Agency personnel via Skillport, and also hosted an Active Shooter Training Event at NLRB Headquarters, which was internally posted for access by all employees.
- › In compliance with OPM's hiring reform efforts, OHR implemented a Standard Operating Procedure to provide a detailed explanation and overview of the

processes to be followed when a vacancy has been identified and when positions are filled internally.

Workforce Management

- › OHR continued to utilize the Workforce Recruitment Program for College Students with Disabilities as a hiring flexibility for managers to recruit qualified postsecondary students and recent graduates with disabilities who are interested in summer internships or permanent jobs.
- › OHR leveraged its relationship with U.S. Department of Veterans Affairs through the Feds for Vets Program, which allows for the recruitment of veterans under various special hiring appointing authorities, such as veterans who are 30 percent or more disabled. Under the program, approximately five special hiring appointments were completed and one appointment was converted to a career-conditional appointment.
- › The Human Capital Planning Office (HCPO) implemented a communication plan to encourage employees to take the Employee Viewpoint Survey (EVS), which included guidance on monitoring the participation rates, talking points, and FAQs.
- › OHR made enhancements to the New Employee Orientation that includes more information about the Agency to help new employees transition successfully.
- › The Office of Equal Employment Opportunity (OEEO) developed and implemented a training program mandatory for all supervisors' managers and senior executive leaders on whistleblower rights and protections for all Agency employees.
- › OEEO recommended that supervisors' and managers' appraisals contain more specific language to measure their efforts to maintain an inclusive work environment, as an action item from the MD715 report submitted to the EEOC.
- › OEEO, OED, and the Division of Operations-Management collaborated in the Agency workgroup on

the Culture Enhancement Program and rolled out training podcasts and interviews from a diverse array of Agency employees in segments throughout the fiscal year.

- » OEE0 sponsored the Agency's network of Asian American and Pacific Islander employees in its request for support from Agency leadership. OEE0 conducted a briefing with Agency leadership on the topic of Employee Resource Groups (ERGs).
 - There was a briefing by OPM diversity and inclusion experts for Agency leadership to address questions about ERGs.
 - Consultations with the unions representing Agency employees will assist OEE0 when drafting final recommendations to Agency leadership.
- » OEE0 and OHR briefed leadership on the Strategic Recruitment Plan and received critical feedback for the plan. OEE0 and OHR are working to implement the plan in early fiscal year 2017.
- » OEE0 develops and hosts special emphasis observances at Headquarters, some of which have been made available to field offices through simultaneous broadcast and/or digital recording.

Motivation

- » HCPO conducted 16 EVS organizational assessments with senior executives on the 2015 EVS results focusing on: identifying Agency trends/ barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enable the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and action planning efforts.
 - During the organizational assessments, results were provided and the two EVS Agency-wide strategic areas of focus, effective leadership and communication, were discussed.
 - Agency leadership will be implementing action plans/ best practices designed to drive higher levels of

employee satisfaction and engagement within their respective organizations, with a particular focus on improving effective leadership and communication.

- The HCPO also developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.

FY 2016 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Information and Technology

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

The NxGen System presently manages:

Internal users	1,368
Cases	309,700
Case Actions of the Agency	1,001,206
Documents, images, and videos, each linked to its Action and Case	7,543,929

The Agency expanded electronic distribution of case documents in FY 2016 through the USPS for 15 document types, resulting in 626 documents being sent to the USPS electronically and savings for the NLRB.

The Agency uses an electronic filing program (E-File) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	51,229
Number of Documents Received	79,011
Number of cases filed thru E-Filing Charges and Petitions	9,958
Number of Board and ALJ Decisions E-Served	803
Total Number of parties E-Served Decisions	54,262
Number of E-Deliveries of Case Documents	3,546

The total number of case documents available for public access in FY 2016 was **984,663**.

In FY 2016, the Agency expanded the use and capabilities for electronic filing to enable parties to E-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed thru Charge and Petition Wizard was **805** in FY 2016.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the 564 document types available to the public.

- ▶ The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- ▶ The team automated and launched the process of authoring, editing, approval and publishing of Operations-Management memorandums.
- ▶ The team completed the automation of the training request and approval process by developing a web-based form with routing, approval, data storage for advanced reporting, and records management.
- ▶ The Agency awarded its UCC contract on September 24, 2014. Through FY 2016, 48 Field Offices, the two existing datacenters, two new voice datacenters, and the Agency's HQ were upgraded to the new network and 47 field offices were migrated fully migrated to Skype for Business.
- ▶ In FY 2016, the OCIO deployed over 1020 iPhone 6's and 6-Pluses to the Field.

Financial Management

- ▶ To enhance internal controls of the purchase card program, Acquisition Management Branch (AMB), in coordination with the Budget Office implemented a process by which quarterly target amounts for purchase card spending are sent to each of the

Headquarters and Regional Offices. These amounts are disseminated at the beginning of each quarter to the Office of Operations- Management. Operations-Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the regional offices.

- In addition to quarterly target amounts sent to the Headquarters Offices, all headquarters purchase card holders submit a Form 13 (Requisition/ Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
- AMB provided monthly and quarterly reports to the Budget Office which offered greater insight and transparency on purchasing habits and spending. By spending hours analyzing what was being purchased on the p-card and working with the Budget Office, senior leadership had more visibility into that budget line item on the Spend Plan. Analysis of this data also identified purchases that should be on a contract and lead to the establishment of the HQ and field office quarterly bulk purchases.
- ▶ In the Agency's continuing effort to increase its financial integrity, financial statement crosswalks were established in order to accurately and efficiently integrate general ledger account balances to the NLRB financial statements. This reduces the timeframe it takes to produce the statements.
- ▶ Updated and submitted the NLRB Travel Card Management Plan, as well as travel charge card metrics, to OMB per the A-123 Appendix B guidance.
- ▶ Developed and disseminated procedure guides for witness payment processes to allow for more timely payments.

- › Developed and disseminated travel reimbursement processes internally with accounting technicians and externally with office managers and travel arrangers to increase accuracy in travel reimbursements.
- › Successfully implemented the Undelivered Orders (UDO) review process, performed on a quarterly basis that assists in liquidating obligations timely and accurately.
- › As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned small businesses. AMB continues to focus on small businesses as the supplier of choice, and particularly on increasing the number of awards to service-disabled veteran owned small business.
- › During FY 2016, the Agency reported a total of \$20.26M and 372 contract actions in the Federal Procurement Data System (FPDS). Of this amount, \$7.4M and 181 actions went to small businesses.

Fiscal Year SBA Goaling Report

Category	Goal	2016	2015	2014	2013
Small Business	23%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	3.43%	2.13%	2.27%	0.84%

Agency Outreach

- › Designated Immigration Coordinators in each Regional office act as a liaison between the office and Headquarters staff regarding casehandling issues that may affect the immigrant worker community.
- › The Agency prepared outreach materials for immigrant communities for use during outreach events, and a letter that outreach coordinators may use to introduce themselves to organizations that serve immigrant communities and offer outreach services. The outreach coordinators have been provided with a "collaboration packet" with the contact information for their outreach counterparts with the EEOC, WHD, and OSHA.
- › During FY 2016, the Agency provided direct outreach to immigrant populations by:
 - Speaking in Spanish and other languages at events organized by the consulates or other community groups, such as the Workplace Justice Project to educate the public about the NLRA
 - Participating in interviews on Spanish-language radio stations
 - Responding to inquiries from individuals who seek consular services
 - Speaking at naturalization ceremonies to new citizens
 - Participating in Asian Public Interest and Public Service Panels
 - Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes
- › Activities directed at the youth population include:
 - Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers' statutory rights and Board processes
 - Holding mock trials for schools to demonstrate how an unfair labor practice trial is conducted
 - Engaging in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers
 - Participating in a union-sponsored youth-to-youth apprentice training

» The agency is Partnering with The Department of Homeland Security (DHS), DOL (Wage and Hour Division (WHD), OSHA, Office of Labor Management Standards (OLMS), and Office of Federal Contract Compliance Programs (OFCCP), OSC, DOJ and EEOC in an IAWG for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. The work group seeks to:

- Ensure agencies' immigration enforcement and worker protection policies, promote workers' cooperation with labor and employment law enforcement authorities without fear of retaliation;
 - Ensure federal enforcement authorities are not used by parties seeking to undermine worker protection laws by enmeshing immigration authorities in labor disputes; and,
 - Ensure the consistent enforcement of federal labor, employment, and immigration laws.
- » The Agency has produced a new informational pamphlet, available on the NLRB website in both English and Spanish, titled "Protecting Employee Rights," which contains an expanded discussion of an employee's right to engage in concerted activity and other rights under the NLRA.
- » The Agency maintains an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.

Ethics

» The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete the annual ethics briefing. Scenarios were provided that demonstrated how well-meaning federal employees could violate government ethics laws and regulations when participating in outside activities, fundraising, and speaking engagements.

- » The Ethics Office developed and delivered a Job Aid that covered participation as a member of a Board Directors for a non-federal organization. All employees are required to request permission from their approving official prior to accepting a position on a Board. Approving Officials are directed to consult with the Ethics Office prior to granting approval. A list of information that employees must give to their approving officials is also provided.
- » The Ethics Office developed an addendum that is used by all NLRB employees and Presidential Appointees to affirm that by consenting to the recording of a presentation, the NLRB employee or official is not permitting the sponsor to use their official title or likeness to advertise or endorse the final product. This addendum is consistent with the requirement, reinforced by the Office of Government Ethics (OGE) at its latest symposium, that Executive Branch employees take reasonable steps to ensure that a third party does not misuse a government employee's position to promote their products or events.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations. Throughout FY 2016 the ethics branch:

- » Distributed a Speaking Engagements guidance memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- » Provided OHR with government ethics information that will be used in the OHR New Hire Orientation presentation.
- » Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as "prejudging" a case, and lead to requests for recusal.

- » Provided legal ethics guidance regarding Immigration and Candor to the Tribunal in consultation with the Immigration Unit.

Guidance Provided

Measure	Goal	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%

- » During FY 2016, the Ethics Office received 844 inquiries. 737 (83%) were resolved within 5 business days.
 - The increase in the number of days to provide guidance is directly related to the significant number of cases in a new area; conflicts involving Board of Director positions. The Ethics Office identified and responded immediately to more routine matters within the targeted time frame. In order to respond more quickly to more complex situations, a template was developed in order to create customized responses for the various types of Board of Director positions. 52% of 53 cases involving Board of Directors exceeded the 5 business day benchmark. However, the Ethics Office kept everyone apprised of their progress prioritized according to need.
- » All financial disclosure reports filed in FY 2016 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.

Note: Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

Internal and External Audit Responses

Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations.

The OCIO and the OCFO responded completely and timely to external information requests including:

- » Juniper ScreenOS and Firewall and VPN Server Data Call in Q1
- » CISCO vulnerability Data Call in Q2
- » Independent Financial Statement Audit

FOIA

Processing Times

Measure	2016	2015	2014
Respond to initial FOIA requests within 20 working days	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	25.4%	20%	708%
Respond to statutory appeals within 20 working days	32.35 working days	24 working days	20 working days

- » Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of 32.7 working days for requests received from October 1, 2015 to June 30, 2016. The Agency received 2,682 requests for this period and responded to 982 of those requests in 1-20 days. Thus, 36.6 percent of the FOIA requests were processed within the 20-day statutory time period.
- » The Agency sought an extension of time to process a request beyond the 20-day period in about 25.4 percent of the FOIA requests received during the fiscal year.
- » The Agency received 23 FOIA Appeals from October 1, 2015 to June 30, 2016. The average elapsed days to process the appeal was 32.35 business days.

The increase in processing times correlates to the

centralization. In 2014 FOIA duties were handled by Headquarters and each Field/Regional Office by their respective FOIA Points of Contacts (POCs). For uniformity and consistency in FOIA handling, it was decided to centralize FOIA processing and this began at the end of FY2014 with Headquarters processing, in addition to its own requests, those of Regions 10 and 28. By June of 2015, all FOIA requests were handled at HQ. The consolidation resulted in a very significant increase in the amount of requests handled by Headquarters. In addition, the Branch was dealing with new staff members, who required necessary training to become proficient in handling requests. There were also difficulties associated with the technology that was available to the Branch. However, the technology has been upgraded and the Branch is currently working with OCIO on making additional improvements to the technology. With the staffing and technology issues well in hand, the Agency anticipates significant improvements in processing times in FY 2017.

FY 2017 Strategic Goal 3 (Support): Achieve Organizational Excellence (H3)

Management Strategies

Employee Development

- » The Office of Human Resources (OHR) continues its partnership with the Office of Personnel Management (OPM) on the implementation and rollout of the new Agency- wide performance management reporting system, USA Performance. In September 2017, performance plans for all non-bargaining unit employees were fully integrated.
- » The Agency continued to comply with OPM's hiring reform efforts, including the 80-day hiring model.
- » Domestic Violence, Sexual Assault, and Stalking Awareness training was released to all employees and 1,452 employees have completed the training. Continuity of Operations Training was released and

1,275 employees have completed the training. The Personal Security On-the-Job Course completion is being monitored to ensure new field employees complete it within the first 90 days on the job.

- » OEEEO collaborated with a workgroup consisting of OHR and OED, to engage in pre-decisional involvement discussions with the NLRBU and the NLRBPA to develop and implement mandatory training for managers and supervisors on the Agency's Reasonable Accommodation Policy. The workgroup has developed a comprehensive training module and anticipates launching the training in FY 2018.
- » The GC Mentoring committee, which includes OEEEO, has been focused on developing ways to measure the success of the Agency's mentoring program by ensuring that the mentoring program supports Agency diversity and inclusion goals, and exploring ways to develop mentoring into a more robust individual development vehicle. OEEEO's collaboration with this workgroup led to the development and launch of a revised survey for mentees, mentors and mentoring program managers that will enable management to gauge the impact of the program.

Workforce Management

- » The Agency instituted a series of trainings that provides pertinent information on the history of disability in the workforce, current workplace laws and regulations, as well as information on Agency recruitment. HR Staff has taken OPM's HR University training entitled "A Roadmap to Success: Hiring, Retaining and Including People with Disabilities" and "Issues, Impacts and Implications of an Aging Workforce" by the Institute on Employment and Disability.
- » OEEEO led the Agency-wide effort to develop a plan for the Agency to develop into a model federal EEO employer as envisioned and implemented through the EEOC's Management Directive 715 (MD715).

OEEEO conducted quarterly meetings with a cross section of organizational units, including the Office of Human Resources (OHR), the Office of Employee Development (OED) and the Division of Operations-Management (OPS). Each office was required to identify, develop, measure and report out on its progress on issues related to barriers to full opportunity. These efforts resulted in a more relevant and responsive MD715 report and plan.

- » OEEEO collaborated with OGC and OED to develop and launch mandatory training for all Agency managers and supervisors on issues and best practices in supporting transgender employees' transition in the workplace. The training was also made available on a voluntary basis to all Agency employees.
- » The Human Capital Planning Office (HCPO) worked on developing a report detailing a deep dive analysis of the changing composition of the workforce and shifting work patterns/trends, including demographics, diversity, size, attrition, performance, and training, to inform core competency requirements for the future workforce.
- » The Security Branch completed 23 percent of the backlogged investigation this fiscal year.

Motivation

- » The HCPO conducted 18 EVS organizational assessments with Agency heads and senior executives EVS results with a focus on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enables the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and

engaging in action planning. During those meetings, the HCPO also discussed the two EVS Agency-wide strategic areas of focus (effective leadership and communication) and its impact on improving EVS scores and the workforce culture. As a result, Agency leadership endorsed an action plan, with a particular focus on enhancing employee engagement, commitment and satisfaction.

- » The HCPO developed an online Employee Suggestion Box making it easier for employees to now go online and submit suggestions electronically.
- » The HCPO held the first ever Sensing Session where non-supervisory personnel within the Division of Administration (DoA) assembled to discuss the customer experience based on feedback received from customers. The sessions examined mapping the customer experience and looking for fresh service ideas to improve it; getting front-line employees from each of the functional branches to collaborate on identifying the causes of problems and finding innovative solutions; and coordinating activities to maximize the speed of service from the customer's point of view. Through this method, DoA employees had an active voice in developing innovative solutions and the sessions marked an important milestone in employee engagement and communication efforts linked to the EVS. The HCPO plans to rollout Sensing Sessions to other organizations with the Agency.
- » OHR also administered the annual Administrative Professional Program where six (6) Agency employees were selected for recognition.

FY 2017 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust (H3)

Information and Technology

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

The NxGen System presently manages:

Internal users	1,379
Cases	331,074
Case Actions of the Agency	1,115,809
Documents, images, and videos, each linked to its Action and Case	8,977,578

The Agency expanded electronic distribution of case documents for 15 document types, resulting in **626** documents being sent to the USPS electronically and in savings for the Agency.

The Agency uses an electronic filing program (E-File) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	51,369
Number of Documents Received	82,459
Number of cases filed thru E-Filing Charges and Petitions	23,356
Number of Board and ALJ Decisions E-Served	563
Total Number of parties E-Serviced Decisions	35,936
Number of E-Deliveries of Case Documents	4,848

The total number of case documents available for public access in FY 2017 was **1,146,108**.

In FY 2017, the Agency expanded the use and capabilities for electronic filing to enable parties to E-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed through the Charge and Petition Wizard was **662**.

Please see <http://www.nlrb.gov/open/public-documents> for a complete list of the 564 document types available to the public.

- › The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- › The team automated and launched the process of authoring, editing, approval and publishing of Operations-Management memorandums.
- › The team completed the automation of the training request and approval process by developing a web-based form with routing, approval, data storage for advanced reporting, and records management.
- › The Agency awarded its UCC contract on September 24, 2014. Through FY 2017, 49 Field Offices, the two existing datacenters, two new voice datacenters, and the Agency's Headquarters were upgraded to the new network and field offices were fully migrated to Skype for Business.
- › In FY 2017, the OCIO deployed over 1,020 iPhone 6's and 6-Pluses to the Field Offices.

Financial Management

- › To enhance internal controls of the purchase card program, AMB, in coordination with the Budget Office, continues to enforce a process by which quarterly target amounts for purchase card spending are sent to each Headquarters and Regional offices. These amounts

are disseminated at the beginning of each quarter to the Division of Operations Management. Operations Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the Regional offices. In addition to quarterly target amounts sent to the Headquarters Offices, all Headquarters PCHs submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.

- ▶ In April 2017, AMB, in coordination with the OCIO, issued a large IDIQ award for Information Technology (IT) services, and ensured strategic sourcing opportunities were carefully effectuated. The result of this acquisition provided the Agency with a framework to promote an agile systems development life cycle, and empowered the Agency's IT personnel to adopt new technologies and automate processes which resulted in increased proficiencies and budgetary savings.
- ▶ AMB continued to utilize the bulk purchasing program for paper and toner across the Agency. The program allows for better coordination, distribution and cost-savings of required items. In FY 2017, bulk orders took place in November, February, May and August.
- ▶ AMB implemented Split Pay for travel payments, which allows vouchered transactions which utilized the agency charge card to pay Citibank directly.

As demonstrated in the **table below**, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned businesses.

From October 1, 2016 – September 30, 2017, a total of \$16M and 339 contract actions were reported within the Federal Procurement Data System (FPDS). Out of this amount, \$6.7M and 176 actions went to small businesses; approximately 41.7 percent of contract dollars and 51 percent of contract actions were awarded to small businesses.

Agency Outreach

The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.

The Agency provided direct outreach to immigrant populations by:

- ▶ Speaking in Spanish and other languages at events organized by the consulates or other community and non-profit groups, such as the Mexican Embassy, Philippine Embassy, Ecuadoran Consulate, El Salvador Consulate, Labor Alliance Committee on Minority Affairs, Colorado Central Region Farmworker Project, West Harlem Development Corporation, and Workplace Justice Project, Justice, Equality & Safety in the Workplace, to educate the public about the NLRA
- ▶ Participating in Labor Rights Week activities organized by the Mexican Embassy and Consulates at various locations throughout the country

Table: Statutory Goals Established By Federal Executive Agencies

Category	Goal	2017	2016	2015	2014	2013
Small Business	23%	41.7%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	7.47%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	28.33%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	1.62%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	23.33%	3.43%	2.13%	2.27%	0.84%

- › Speaking at naturalization ceremonies
- › Participating in interviews on Spanish-language radio stations
- › Staffing booths at informational fairs
- › Responding to inquiries from individuals who seek consular services
- › Participating in Platicas en Consulado (Consul on Wheels)
- › Participating in a Univision phone bank
- › Speaking at the Federacion De Clubes Zatecanos event sponsored by the Mexican consulate
- › Speaking at Filipino Workers Center SAMA-SAME Network Meetings

Other Agency activities directed at the immigrant population include:

- › Speaking at naturalization ceremonies to new citizens
- › Participating in Asian Public Interest and Public Service Panels
- › Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes, including a delegation from South Korea

Activities directed at the youth population include:

- › Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers' statutory rights and Board processes
- › Holding mock trials for schools to demonstrate how an unfair labor practice trial is conducted
- › Leading discussions at the Hanna Boys Center/La Luz Center
- › Participating in Youth to Youth Apprenticeship Training program

The Agency continued to partner with DHS, DOL, OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.

The Agency has joined with other state and federal agencies by:

- › Participating in "listening sessions" coordinated by worker advocacy groups.
- › Participating in Wage Theft Task Force discussions
- › Meeting with the Illinois Attorney General's Office
- › Meeting with the Michigan Employment Relations Commission
- › Participating in a forum sponsored by City of Chicago Department of Human Services
- › Participating in a community outreach program sponsored by U.S. Rep. Susan Brooks
- › Participating in the EEOC Training Institute Technical Assistance Program Seminar
- › Participating in the California Association of Labor Relations Officers annual conference
- › Participating in an FMCS open house
- › Providing outreach to the New York State Department of Labor Anti Retaliation Task Force
- › Participating in SBA Ombudsman roundtables and listening sessions
- › Participating in DOL Prevailing Wage Seminar

Ethics

The Ethics Staff continued to meet with the General Counsel's office to review the status of all ethics projects and to discuss notable ethics issues.

In coordination with the Office of the General Counsel, the Ethics Staff:

- › Developed and distributed guidance concerning OPM's updated Combined Federal Campaign (CFC) regulations to all Agency employees.
- › Met with Agency leadership to discuss the limitations placed on CFC fundraising.
- › Distributed an updated Speaking Engagements DAEO memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- › Distributed guidance to all supervisors and managers highlighting the restrictions that apply when a supervisor serves as a campaign coordinator and/or keyworker for the Combined Federal Campaign (CFC).
- › Suggested updates to the Agency's Pro Bono program to comply with government ethics regulations and the Agency's IT policy.
- › Completed a Structural Assessment of the Ethics Office to maximize resources.
- › Developed and distributed a Hatch Act webcast to all Agency employees.
- › Answered extensive Hatch Act hypotheticals submitted by the NLRBPA.
- › Distributed a memo which was intended to remind supervisors and managers that they should not encourage their subordinates to participate in outside activities or causes, including political advocacy events and activities. The memo explained that this conduct would implicate the regulations in the Standards of Conduct concerning misuse of position, as well as the Hatch Act, if the conduct involves political activity. The DAEO discussed this memo with Agency Leadership at a General Counsel staff meeting.
- › Assisted the Office of the Chief Financial Officer (OCFO) in the review of the Agency's travel policy to ensure that it is consistent with 31 U.S.C 1353 which covers Travel Reimbursement from a Non-Federal Source.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.

During FY2017, the Ethics Staff:

- › Developed a comprehensive ethics orientation package that is used in the onboarding of NLRB Political Appointed Senate Confirmed employees (PAS).
- › Provided customized ethics briefing to newly appointed Board Members.
- › Met with newly appointed Regional Directors to discuss how the Ethics Office supports each Regional Office.
- › Provided Operations Management with guidance concerning the ethics limitations placed on NLRB employees who are engaged in outreach activities.
- › Provided Ethics Briefings for the Professional Exchange Program and Honors Attorney Orientation.
- › Developed ethics training materials that will be distributed through the Agency's SharePoint page in the first quarter of FY 2018.
- › Developed comprehensive post-employment guidance which emphasizes an attorney's recusal obligations after departure from the Agency.
- › Continued to participate in the Office of Human Resources (OHR) New Hire Onboarding.
- › Continued to use the "Ethical Highway" webpage to archive guidance documents, newsletter articles, Tips of the Month, and Job Aids.

Guidance Provided

Measure	Goal	2017	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	92%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%	100%

- ▶ All financial disclosure reports filed in FY 2017 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.
- ▶ The annual financial disclosure cycle began on January 1st. NLRB filers use electronic filing systems to comply with the Office of Government Ethics' filing requirement.
- ▶ In mid-January, the Ethics Office began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2016. In all cases, the Ethics Office completed the review of each report within 60 days of receipt and notified the filer of any real or potential conflicts.

During FY 2017, the Agency has completed its review of:

- ▶ 30 Annual Confidential Financial Disclosure Reports (OGE 450)
- ▶ 84 Annual Public Financial Disclosure Reports (OGE 278e)
- ▶ 9 New Entrant Public Financial Disclosure Reports (OGE 278e)
- ▶ 119 Monthly Transaction Reports (OGE 278T)
- ▶ 13 Termination Reports (OGE 278)

Note: Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

Internal and External Audit Responses:

- ▶ Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations.
- ▶ OCFO responded to the Data Act audit.
- ▶ OCIO responded to one C-CAR data call regarding Kaspersky software.
- ▶ OCIO responded to one C-CAR data call regarding WannaCry Ransomware.
- ▶ OCIO responded to Risk Management Assessment data calls related to Executive Order 13800 "Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure," and OMB Memorandum M-17-25.

FOIA**Processing Times**

Measure	2017	2016	2015	2014
Respond to initial FOIA requests within 20 working days	46.36 days; 35.9 %	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	10.5%	25.4%	20%	70.8%
Respond to statutory appeals within 20 working days	20 working days	32.35 working days	24 working days	20 working days

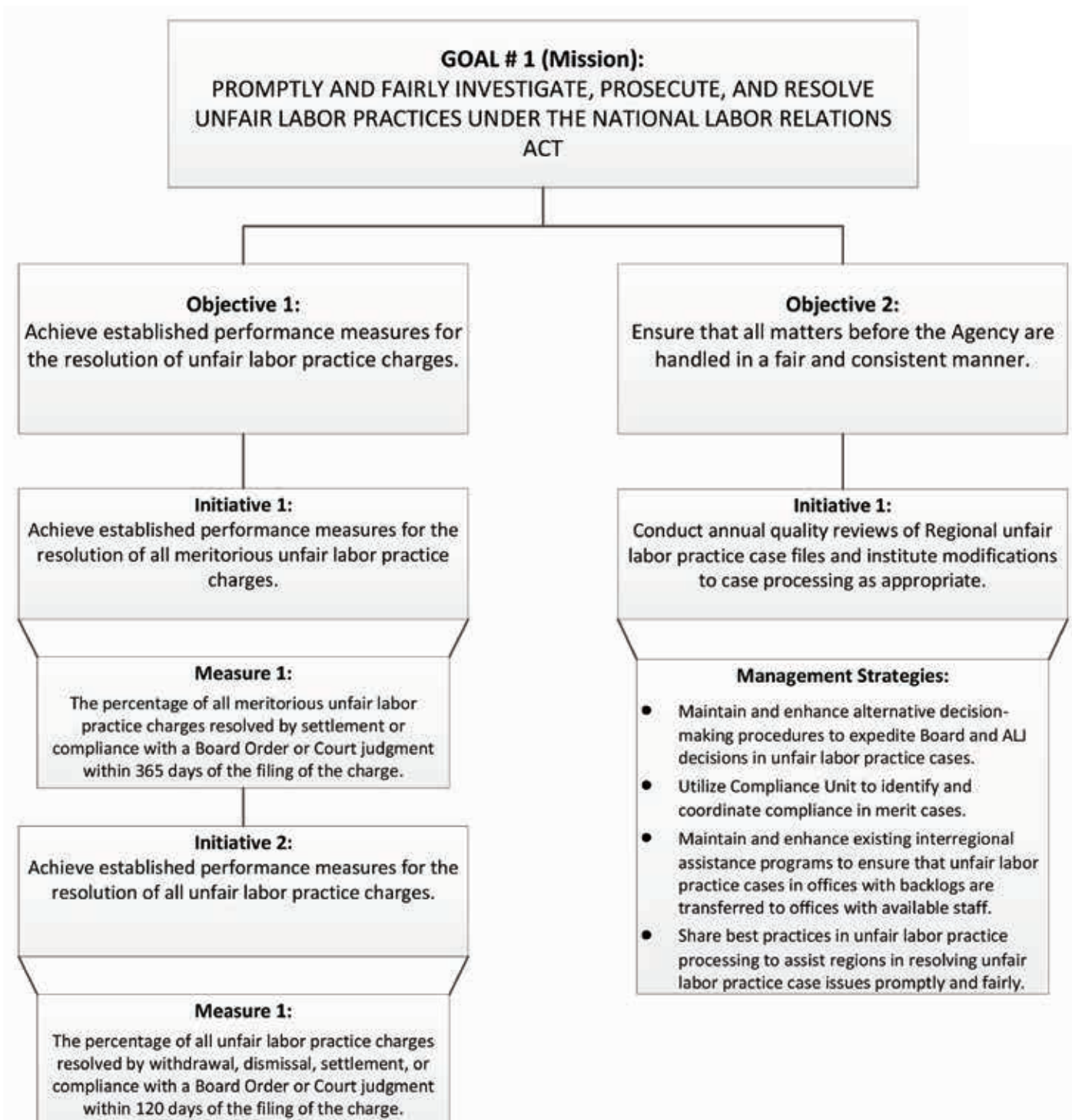
- ▶ Based on the information in the FOIAonline, the Agency responded to initial FOIA requests in an average of 46.36 working days for requests received from October 1, 2016 to September 30, 2017. The Agency received

2,217 requests this period and responded to 798 of those requests in 1-20 days. Thus, 35.9 percent of the FOIA requests were processed within the 20-day statutory time period.

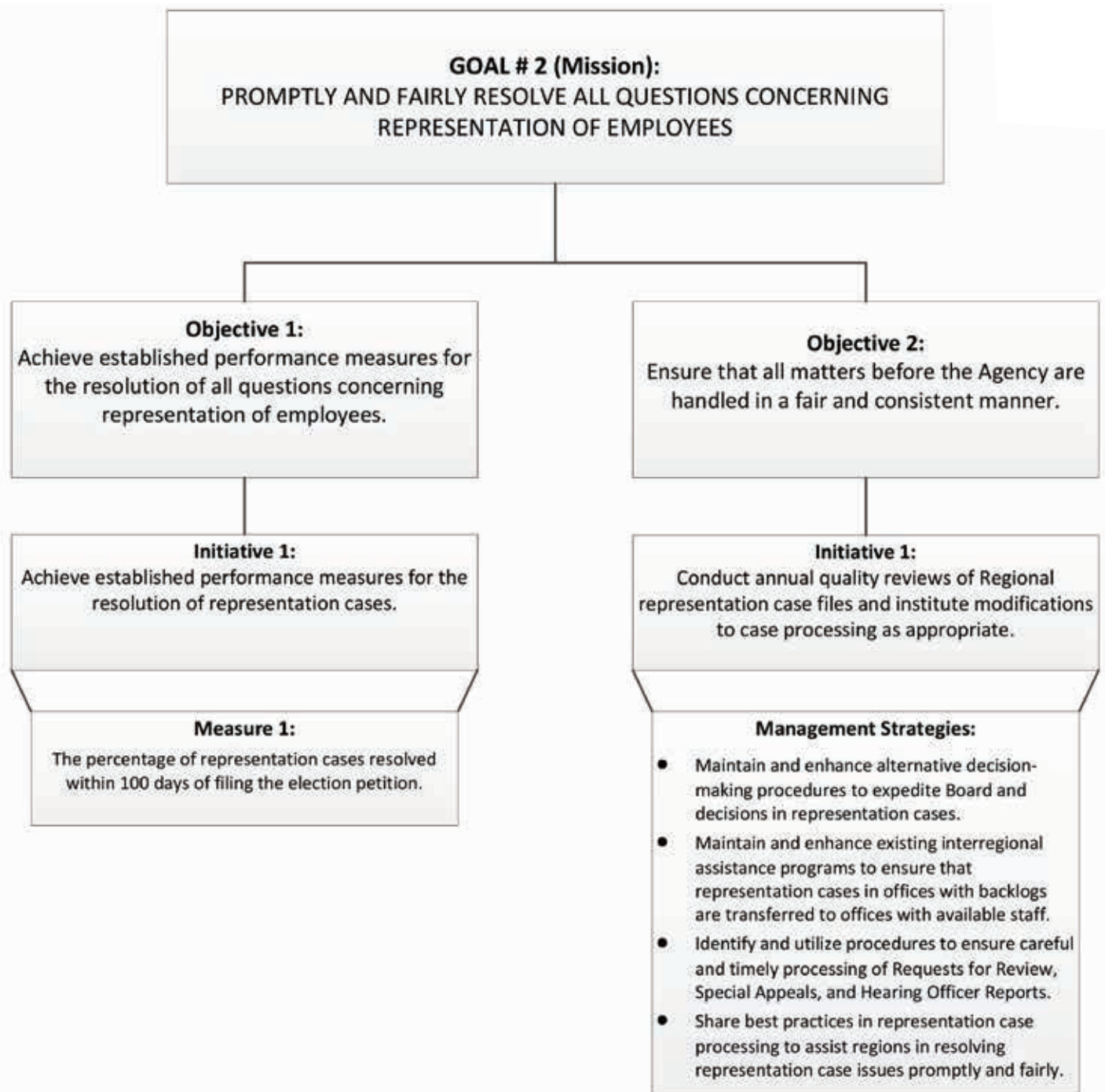
- › The Agency sought an extension of time to process a request beyond the 20-day period by sending a letter to the requester taking an additional ten working days to respond to the request in approximately 10.5 percent of the FOIA requests received during the fiscal year 2017.
- › The Agency received 11 FOIA Appeals from October 1, 2016 to September 30, 2017 and responded to ten of these appeals. The Agency responded to eight of those appeals in 1-20 days. Thus, 72.7 percent of the FOIA appeals were processed within the 20-day statutory time period.
- › The Agency did not seek an extension of time for the FOIA appeals received from October 1, 2016 to September 30, 2017.
- › All FOIA requests and appeals are now processed in Headquarters. In FY 2017, the influx of new staff members, most of whom required significant training until they became proficient in handling requests, and difficulties associated with technology, which has since been upgraded, affected FOIA response rates.

Appendix D

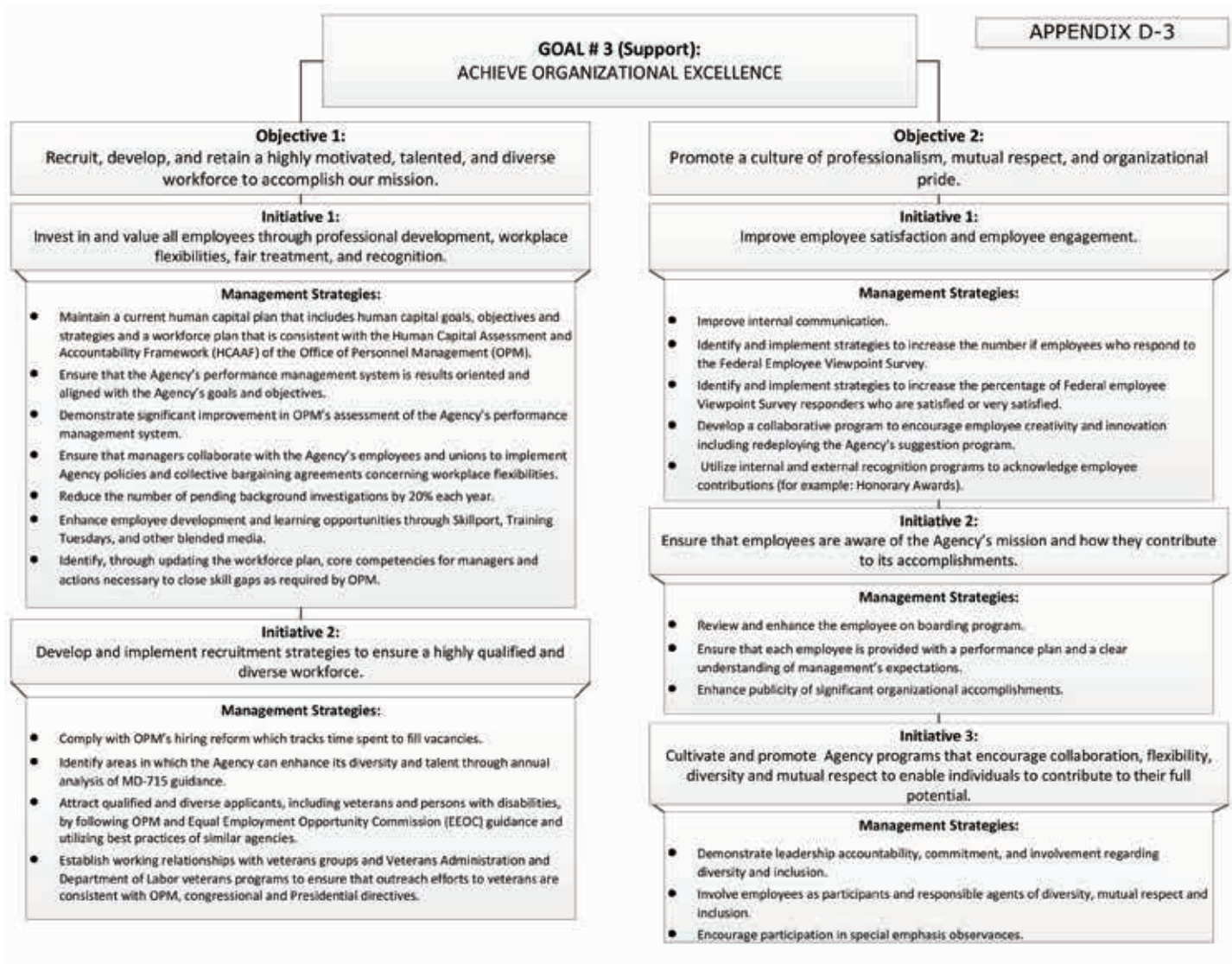
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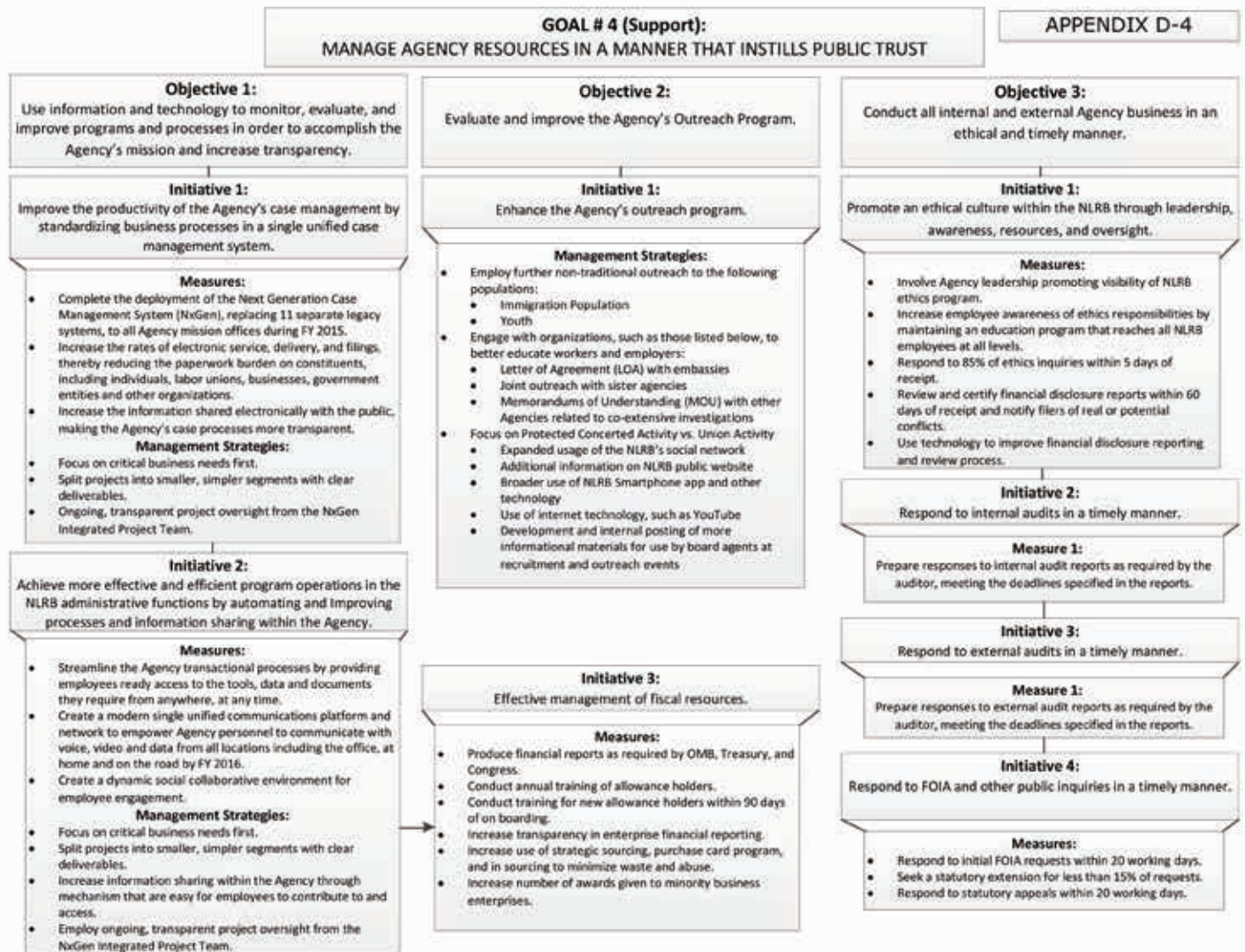
Strategic Goals D-2



Strategic Goals D-3



Strategic Goals D-4





National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

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NATIONAL LABOR RELATIONS BOARD

FY2017

PERFORMANCE AND ACCOUNTABILITY REPORT

Protecting Democracy in
the Workplace Since 1935



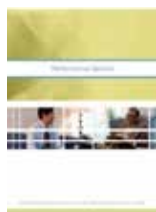
HOW THIS REPORT IS ORGANIZED

This Performance and Accountability Report (PAR) consists of the following sections



The Management's Discussion and Analysis (MD&A) Section provides an overview of our mission, organization, mission-related goals, performance and financial system highlights as well as the National Labor Relations

Board's (NLRB's) operational and casehandling highlights for FY 2017. The MD&A also contains an analysis of financial statements and a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act (FMFIA).



The Performance Section compares the NLRB's performance to its strategic goals as set forth in the FY 2014 to FY 2018 Strategic Plan. The Strategic Plan includes two mission-related goals and two support goals to help achieve the

Agency's mission and vision. The performance measures associated with the mission-related goals are outcome-based. The agency has several outcome-based performance measures for the support goals combined with those that are management strategy driven to ensure alignment with the mission and needs of the customer. This is the third year that the NLRB is reporting its performance under the new goals.



The Financial Section is composed of the NLRB's financial statements, their related footnotes, and the Independent Auditors' Report.



Other Information provides the performance and management challenges identified by the Inspector General in this fiscal year, and the NLRB's summary of audit and management assurances which details the Agency's review of compliance with the Improper

Payments Elimination and Recovery Improvement Act (IPERIA). For an update on the Board's progress in addressing management and performance challenges from FY 2016 please see <https://www.nlr.gov/reports-guidance/reports/oig-semiannual-reports>.



Appendix A lists the acronyms cited throughout this report, Appendix B is a glossary of terms cited throughout this report, Appendix C presents historical performance data and Appendix

D represents the complete strategic goal structure.

An electronic version of the NLRB FY 2017 Performance and Accountability Report is available on the NLRB's website at www.nlr.gov.

The NLRB's Strategic Plan is also available at this website along with graphs and data which reflect the NLRB's work.

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MESSAGE FROM THE CHAIRMAN

November 1, 2017



Philip A. Miscimarra
Chairman

As Chairman of the National Labor Relations Board (NLRB), I am pleased to submit the Performance and Accountability Report for Fiscal Year 2017. This annual report provides insight into the finances and activities of the NLRB, an independent federal agency established in 1935 which serves the interests of employees, employers, and unions. Contained in this document are the NLRB's audited financial statements and performance information related to the goals set forth in the Agency's Strategic Plan.

I have served on the Board since 2013, and have had the privilege of serving as Chairman since April 2017. The Board consists of hard-working professionals and other staff members dedicated to the even-handed enforcement of our statute, the National Labor Relations Act. I am proud to have the opportunity to work with such talented colleagues who make significant sacrifices in their public service.

The NLRB has been undergoing a significant transition in the past fiscal year. Two new Board members — Marvin E. Kaplan and William J. Emanuel — were nominated by President Donald J. Trump and confirmed by the Senate, followed by their commencement as Board members in August and September 2017, respectively. For the first time since August 2015, the NLRB returned to its full complement. As of September 30, 2017, in addition to me, the NLRB has included Board Members Mark Gaston Pearce, Lauren McFerran, Marvin E. Kaplan, and William J. Emanuel.

As Chairman, I certify that the NLRB's internal controls and financial systems meet and conform to the requirements of the Federal Managers' Financial Integrity Act, and I have made every effort to verify the accuracy and completeness of the financial and performance data presented in this report. A more detailed discussion of the Agency's internal controls can be found starting on page 27 of this report.

Philip A. Miscimarra
Chairman

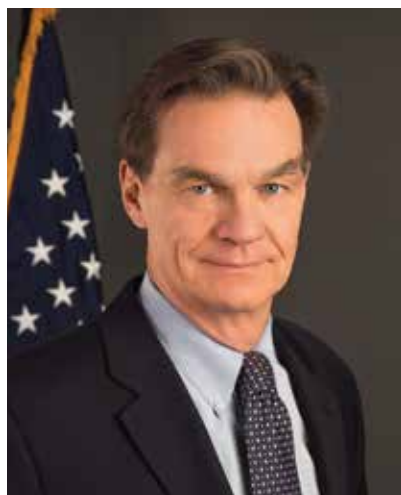
BOARD MEMBERS



From Left to Right: Board Member Marvin E. Kaplan, Board Member Mark G. Pearce, Chairman Philip A. Miscimarra, Board Member Lauren McFerran, and Board Member William J. Emanuel

MESSAGE FROM THE GENERAL COUNSEL

October 30, 2017



Richard F. Griffin, Jr.
General Counsel

Millions of employers are subject to the National Labor Relations Act, which guarantees private-sector workers the right to seek to address their collective workplace concerns. Specifically, with or without union representation, workers have the right to organize, bargain collectively, and participate in activities with one another to improve their pay and working conditions. Our job at the National Labor Relations Board (NLRB) is to safeguard that right by (1) preventing and remedying unfair labor practices committed by employers and unions, and (2) conducting secret-ballot elections to determine whether or not employees want union representation.

This extensive FY 2017 report outlines the Agency's case handling, administrative, financial and outreach accomplishments; demonstrates excellent management of resources; and addresses current and future challenges.

CASEHANDLING

As General Counsel, my Office oversees the investigation and prosecution of unfair labor practice charges, as well as processes representation case petitions filed with our 26 Regional and 23 satellite offices across the nation. I also serve as the Agency's chief administrative officer. Now more than ever it is critical to put and keep the right people in place and give them the right tools to do the job that taxpayers expect and deserve.

I take seriously our duty to ensure that each case filed with the Agency is processed fairly and expeditiously. Our network of field offices are staffed by approximately 1,000 dedicated public servants, who perform effective and efficient case handling work each and every day. In FY 2017, our case intake was in excess of 21,500 cases.

I am very proud of our field offices' efforts to assist parties in resolving their issues short of litigation, and, this year, our settlement rate reached 95%; thus, we were able not only to promote industrial peace, but also save taxpayer dollars. Two notable settlements included a longstanding case involving a refusal to hire Teamsters-represented employees, which

culminated in an agreement where the employer will pay \$21.6 million of which \$14.4 million will be disbursed as backpay to 257 employees and \$7.2 million will be distributed to a pension fund, and another case where 29 unlawfully laid off and discharged employees shared a \$570,000 remedy. I am equally proud of this year's litigation efforts performed by the field offices, with assistance from the Division of Legal Counsel, including in the high-profile and multi-Regional cases involving McDonald's, Lyft, and Community Health Services.

Because the NLRB is charged with protecting workers rights in an ever-changing economy, it is incumbent upon the Agency to perform a comprehensive review of adapting and evolving workplaces and employment relationships when cases are brought before us. For that reason, I have identified priority issues for centralized consideration, and during this fiscal year, some of those included the following: employer statements about the impact of unionization on employee direct access to management under *Tri-Cast, Inc.*, 274 NLRB 377 (1985); an employer's permanent replacement of economic strikers based upon an unlawful motive under *Hot Shoppes*, 146 NLRB 802 (1964); the application of *Purple Communications*, 361 NLRB No. 126 (2014), to electronic systems other than email; intermittent work stoppages versus partial strikes; requested representation during investigatory interviews in non-unionized workplaces; the employment status of workers in the "gig" economy; and misclassification of employees as independent contractors.

As new legal issues arise, the Agency will continue to investigate and review cases to ensure that the protections of the Act keep

pace with industrial realities around the country. Notably, this fiscal year, the circuit courts agreed with our analysis in a number of priority matters, such as: *King Soopers*, involving compensation for search-for-work and work-related expenses; *Pier Sixty*, involving protesting working conditions on Facebook; *MasTec*, involving rights to publicly protest via media about wages and working conditions, and *Cooper Tire*, involving conduct on a picket line that retained protected status.

Further, in addition to other excellent brief filings, our Division of Enforcement Litigation did an admirable job with the filing of a forceful brief with the Supreme Court in *Murphy Oil*, seeking to have the Court uphold the Board's decision that an employer cannot maintain mandatory arbitration agreements with individual employees that bar them from pursuing work-related litigation on a joint, collective or class basis in any forum, arbitral or judicial.

ADMINISTRATIVE

As previously reported, the Agency's Headquarters' relocated and reduced its footprint by 30% garnering significant savings in rent and security. This fiscal year, the Agency crafted a national space policy to similarly reduce its footprint in Regional Offices around the country. Relatedly, this fiscal year, the Agency enhanced its unified communication system by making Skype operational nationwide, thus allowing for greater productivity through remote access, enhanced real-time collaboration, expeditious and paperless communications, and lowering of overall costs. The Agency also ensured a successful transition of the SES cadre to USA Performance, a new performance management

reporting system, as well as revamped the performance management system by reducing the number of appraisal cycles, automated a system designed to capture periods within the appraisal process, and standardized the awards process.

FINANCIAL

The Agency fully understands the importance of utilizing its resources effectively, and does an excellent job in this regard. This fiscal year, the Office of the Chief Financial Officer engaged directly with my Office to ensure exceptional financial management of our appropriations and prompt responses to OMB, including to OMB Memorandum 17-22 mandating leaner and more efficient government operations. I am pleased to report that our submission met with approval as it comprehensively addressed all efforts, past and present, to streamline Agency structure, operations, functions and processes.

OUTREACH

The issues before the Agency are ones that, for decades, have been met with passion and differences of opinion. As General Counsel, I have made every effort to speak and, more importantly, listen to the concerns and interests of all parties. From guidance memoranda to speaking engagements, I hope that union and management representatives agree that we have provided access to ample information about case handling initiatives and procedures, and about case developments at the Agency.

Educating the public about our statute and our Agency is a priority for me. That is why, under my tenure, the Agency has continued to expand our outreach program. This fiscal year, Headquarters and Regional personnel conducted workshops nationwide to train

arbitrators about the Board's *Babcock & Wilcox* decision and extant case precedent and standards, our social media presence continued to grow, and our website improved e-filing and on-line FOIA request capabilities.

We have also engaged in intra- and inter-agency collaborative efforts to better educate and serve the public, and particularly, vulnerable worker populations. For example, our Agency's Cultural Enhancement Program has continued to assist with recruiting and retaining a culturally diverse workforce, which can better identify with the populations we serve. This fiscal year, the Agency has continued to develop training materials for our immigration coordinators nationwide to assist with outreach and case handling matters dealing specifically with vulnerable worker populations. Notably, in *Deep Distributors of Greater NY*, 365 NLRB No. 95 (June 20, 2017), the Board agreed with our position that the employer violated the Act when its counsel threatened employees about their immigration status during the course of the administrative hearing, and, based thereon, referred counsel for disciplinary investigation and ordered publication of the Notice to Employees due to the seriousness of the violations.

We have also continued to collaborate with partners from the Department of Labor, Equal Employment Opportunity Commission, the Department of Homeland Security, and the Department of Justice to engage with worker advocates and with each other to ensure good government and best practices in enforcement activities. Notably, the EEOC and NLRB are also collaborating on a joint guidance memo for public dissemination. Finally, the Agency continued to reach out to foreign embassies/

ministries/consulates to promote the education of workers and small business owners about our statute.

CONCLUSION

As General Counsel, I have been committed to an open, fair, and transparent process here at the Agency. I have appreciated and encouraged constructive relationships with representatives of both management and labor who appear before the Agency. And finally, I have genuinely enjoyed working with all of the Agency's

capable employees to fulfill our mission of protecting workplace rights and providing the highest quality service to the public.

A handwritten signature in black ink, appearing to read "Richard F. Griffin, Jr.", with a stylized, cursive script.

Richard F. Griffin, Jr.

General Counsel

2017 YEAR IN REVIEW

PUBLIC INFORMATION PROGRAM

The Agency's Public Information Program is one of the critical services provided to employers, unions, and employees. Under this program, in addition to the services provided by the Congressional and Public Affairs Office in Headquarters, Board agents in the field offices provide information directly to individuals or entities that contact the Agency seeking assistance. In FY 2017, the Agency's Regional Offices received 53,052 public inquiries regarding workplace issues. In responding to these inquiries, Board agents spend a considerable amount of time explaining the coverage of the NLRA, accepting charges, or referring parties to other federal or state agencies.

The public may also contact the Agency through a toll-free telephone service (1-866-667-NLRB) designed to provide easy and cost-free access to information. Callers hear messages recorded in English and Spanish that provide a general description of the Agency's mission, contact information for other government agencies and connections to the Regional Offices in closest geographic proximity.

Public outreach is encouraged and has been embraced at all levels of the Agency. Over the past few years, the Board Members, General Counsels, Regional Managers, and board agents participated in numerous speaking engagements at events sponsored by law schools, the American Bar Association, the Chamber of Commerce, and various employer, union and worker advocacy groups. Agency representatives also engaged in outreach

events involving other federal agencies, business organizations, workers' rights centers, human resources professional groups, and labor organizations to educate them on the NLRA and the role of the NLRB as an impartial enforcement. Further, Regional Offices publish newsletters and participate in televised or radio public talk shows.

As part of the Agency outreach to communities with limited English proficiency, in addition to the bilingual toll-free telephone service for inquiries, the NLRB employs language assistants and contracts with service providers whose job is to provide interpretation and translation services in various languages to assist our field office casehandling. The public website contains Agency publications about the NLRA and processes, which are translated into Spanish, Chinese, Creole, Korean, Russian, Somali and Vietnamese. The number of electronic document templates available in Spanish continues to increase and the database of translated representation case notices and ballots has expanded to include 31 languages. Also, an Agency film about representation case processing has been recorded for the benefit of the Spanish-speaking community. Finally, the Agency has teamed up with other federal agencies in conducting listening sessions among the Asian American and Pacific Islander community to educate them about the rights of workers and to listen to their concerns regarding treatment at their workplaces and confusion about our processes.

FY 2017 STATISTICAL HIGHLIGHTS

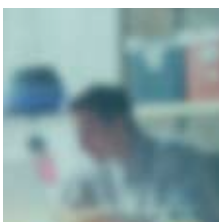
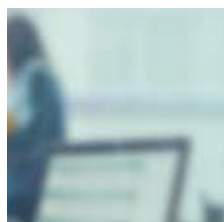
- The Board issued 266 decisions in contested cases, 158 ULP cases and 108 representation cases.
- 98.5 percent of all initial elections were conducted within 56 days of filing of the petition¹.
- Initial elections in union representation cases were conducted in a median of 23 days from the filing of the petition.
- Regional Offices issued 1,263 complaints.
- 82.4 percent of meritorious ULP charges resolved within 365 days.
- Regional Offices prevailed in 84 percent of Board and administrative law judge (ALJ) decisions which were won, in whole or in part.
- 69.2 percent of Board decisions reviewed by Appellate Courts were enforced or affirmed in whole or in part.
- \$73,607,990 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines, and 1,716 employees were offered reinstatement.
- The Agency received 53,037 inquiries through its Public Information Program, and 54 calls through its Agency-referred toll-free number.
- The Division of Judges closed 170 hearings, issued 184 decisions, and achieved 453 settlements in cases on its trial docket.



¹The performance measure for Goal 2 found on page 26 measures the number of days required for the processing of petitions, and this statistic focuses on directed, stipulated or consent election cases.



MANAGEMENT'S DISCUSSION AND ANALYSIS



ABOUT THE NLRB



MISSION STATEMENT

Protecting workplace democracy and the rights of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation's economy.

THE NATIONAL LABOR RELATIONS ACT (NLRA)

- Basic law governing relations between labor unions and business enterprises engaging in interstate commerce in the private sector
- Purpose – serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees
- Embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining and concerted activities to improve terms and conditions in the workplace
- Addresses the rights and obligations of employees, labor unions, and private employers

THE NATIONAL LABOR RELATIONS BOARD (NLRB)

The NLRB is an independent federal agency created in 1935 to administer and enforce the NLRA by conducting secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and by preventing and remedying statutorily defined ULPs by employers and unions.

The NLRB acts only on those cases brought before it and does not initiate cases. All proceedings originate with the filing of charges

or petitions by employees, labor unions, private employers, or other private parties.

In its 82-year history, the NLRB has counted millions of votes, investigated hundreds of thousands of charges, and issued thousands of decisions. These numbers tell an important part of the Agency's story. Specific data on the following components of the Agency's work can be found on the NLRB's web site on: <https://www.nlrb.gov>:

- **Charges and Complaints** – Data related to charges of unfair labor practices received by Regional Offices and their disposition over time, including withdrawals, dismissals, complaints, and settlements
- **Petitions and Elections** – Data related to petitions for representation, decertification, unit amendment and clarification, and recession of union security agreements received by Regional Offices, elections held, and outcomes
- **Decisions** – Data related to decisions by the Board and NLRB Administrative Law Judges
- **Litigation** – Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions
- **Remedies** – Data related to remedies obtained to resolve unfair labor practices, including backpay and offers of reinstatement

EMPLOYEE RIGHTS UNDER THE NLRA

The National Labor Relations Act extends rights to many private-sector employees, including the right to organize and to bargain collectively with their employer. Employees covered by the Act are protected from certain types of employer and union misconduct and have the right to support union representation in a workplace where none currently exists or to attempt to improve their wages and working conditions through other group action.

Under the NLRA, employees have the right to:

- Form, or attempt to form, a union among the employees of an employer.
- Join a union whether the union is recognized by the employer or not.
- Assist a union in organizing employees.
- Engage in protected concerted activity. Generally, “protected concerted activity” is group activity that seeks to improve wages or working conditions in a particular workplace.
- Refuse to do any or all of these things. However, the union and employer, in a State where such agreements are permitted, may enter into a lawful union-security clause requiring employees to pay union dues and fees.

The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

STATUTORY STRUCTURE

Agency leadership consists of six presidential appointees – five Board Members (including the Chairman) and the General Counsel. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the Board, and the General Counsel. The Board and the General Counsel maintain a Headquarters in Washington, D.C., and the Agency also maintains a network of Regional² (“Field”) offices and three satellite Judges’ offices. The NLRA assigns separate and independent responsibilities to the Board and the General Counsel. The General Counsel’s role is chiefly prosecutorial and the Board’s is adjudicative. A map depicting the Regional offices can be found at: <https://www.nlrb.gov/who-we-are/regional-offices>

THE FIVE-MEMBER BOARD

The five-member Board primarily acts as a quasi-judicial body, deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate, and serve staggered five-year terms.³ The President designates one of the Board Members as Chairman. Board Member Philip A. Miscimarra was designated Chairman on April 24, 2017.

² Including Sub-Regional and Resident Offices.

³ Even though Board Members have five-year-terms, a new five-year term begins running immediately upon the expiration of the previous Member’s term and the seat remains vacant until an individual is nominated and confirmed by the Senate. Therefore, a significant lapse of time could occur between when a term expires and a new Board Member is confirmed, which means that a new Board Member might serve only a portion of a five-year term.

THE GENERAL COUNSEL

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. The General Counsel is appointed by the President to a four-year term, with Senate consent, and is responsible for the investigation and prosecution of unfair labor practice cases and for the general supervision of the NLRB Regional Offices, as well as of the administrative, financial and human capital operations of the Agency. In performing delegated functions, and in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board.

However, with respect to the investigation and prosecution of unfair labor practice cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Board. Richard F. Griffin, Jr., was nominated by the President for General Counsel and appointed to a full four-year term on November 1, 2013.

Below is information about the terms of the current Presidential appointees of the NLRB.

	Sworn In	Term to Expire
Philip A. Miscimarra Chairman	8/7/2013	12/16/2017
Mark G. Pearce Member	4/7/2010	8/27/2018
Lauren McFerran Member	12/17/2014	12/16/2019
Marvin E. Kaplan Member	8/10/2017	8/27/2020
William J. Emanuel Member	9/26/2017	8/27/2021
Richard F. Griffin, Jr. General Counsel	11/4/2013	10/31/2017 ⁴

⁴ Deputy General Counsel Jennifer A. Abruzzo assumed the role of Acting General Counsel on November 1, 2017.

ORGANIZATION

BOARD Philip A. Miscimarra , <i>Chairman</i> Mark Gaston Pearce , <i>Board Member</i> Lauren McFerran , <i>Board Member</i> Marvin E. Kaplan , <i>Board Member</i> William J. Emanuel , <i>Board Member</i>			OFFICE OF THE GENERAL COUNSEL Richard F. Griffin, Jr. , <i>General Counsel</i> Jennifer A. Abruzzo , <i>Deputy General Counsel</i>		
OFFICE OF THE EXECUTIVE SECRETARY Gary Shinnors <i>Executive Secretary</i>		INSPECTOR GENERAL David P. Berry <i>Inspector General</i>		DIVISION OF OPERATIONS-MANAGEMENT Elizabeth Tursell <i>Associate to the General Counsel</i>	
OFFICE OF THE SOLICITOR Vacant <i>Solicitor</i>		OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY Brenda Valentine Harris <i>Director</i>		REGIONAL OFFICES	
OFFICE OF REPRESENTATION APPEALS Vacant		DIVISION OF ADMINISTRATION Lasharn Hamilton <i>Director</i>		DIVISION OF ENFORCEMENT LITIGATION John H. Ferguson <i>Associate General Counsel</i>	
DIVISION OF JUDGES Robert A. Giannasi <i>Chief ALJ</i>		OFFICE OF THE CHIEF FINANCIAL OFFICER Mehul Parekh <i>Chief Financial Officer</i>		DIVISION OF ADVICE Jayme L. Sophir <i>Associate General Counsel</i>	
CONGRESSIONAL AND PUBLIC AFFAIRS OFFICE Carmen F. Spell <i>Director</i>		OFFICE OF THE CHIEF INFORMATION OFFICER Prem Aburvasamy <i>Chief Information Officer</i>		DIVISION OF LEGAL COUNSEL Barbara O'Neill <i>Associate General Counsel</i>	

CASEHANDLING FUNCTIONS

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice on union representation and by preventing and remedying statutorily defined unfair labor practices. The NLRB maintains a customer-focused and a results-oriented philosophy to best serve the needs of the American people.

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice on union representation and by preventing and remedying statutorily defined ULPs. The NLRB maintains a customer-focused and results-oriented philosophy to best serve the needs of the American people.

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed voluntarily under the NLRA by individuals, employers, or unions. In carrying out the NLRA's mandates, the NLRB supports the collective bargaining process and seeks to eliminate certain ULPs on the part of employers and unions so as to promote commerce and strengthen the Nation's economy.

The two mission-related goals of the NLRB are:

- Promptly and fairly investigate, prosecute, and resolve unfair labor practices under the National Labor Relations Act
- Promptly and fairly resolve all questions concerning representation of employees

UNFAIR LABOR PRACTICE PROCEEDINGS

The NLRA contains a code of conduct for employers and unions, and regulates that conduct in unfair labor practice (ULP) proceedings which are remedied through adjudicatory procedures under the NLRA.

The General Counsel has sole responsibility— independent of the Board—to investigate charges of ULPs, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding ULP cases.

The General Counsel investigates ULP charges through the Agency's network of Regional, Sub-Regional, and Resident Offices (Field Offices). If there is reason to believe that a ULP charge has merit, the Regional Director, on behalf of the General Counsel, issues and prosecutes a complaint against the charged party, unless a settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an administrative law judge, who issues a decision. The decision may be appealed by any party to the Board through the filing of exceptions. The Board decides cases on the basis of the formal trial record, according to the statute and the body of case law that has been developed by the Board and the federal courts.

If the Board finds that a violation of the Act has been committed, the role of the General Counsel thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation. Although Board decisions and orders in ULP cases are final and binding with respect to the General Counsel, they are not self-enforcing. The statute provides

that any party may seek review of the Board's decision in a United States Court of Appeals. In addition, if a party refuses to comply with a Board decision, the Board itself must petition for court enforcement of its order. In court proceedings to review or enforce Board decisions, the General Counsel represents the Board and acts as its attorney. Also, the General Counsel acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Sections 10(e) and (f) of the NLRA after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Section 10(j) of the NLRA empowers the NLRB to petition a federal district court for an injunction to temporarily prevent ULPs by employers or unions and to restore the status quo, pending full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of ULP charges, in certain instances, would frustrate the Act's remedial objectives. In determining whether the use of Section 10(j) is appropriate in a particular case, the principal question is whether injunctive relief is necessary to preserve the Board's ability to effectively remedy the ULP alleged, and whether the alleged violator would otherwise reap the benefits of its violation.

Under NLRB procedures, after deciding to issue a ULP complaint, the General Counsel may request authorization from the Board to seek injunctive relief. The Board votes on the General Counsel's request and, if a majority votes to authorize injunctive proceedings, the General Counsel, through Regional Staff, files for injunctive relief with an appropriate federal district court.

In addition, under Section 10(l) of the Act, when a Region's investigation of a charge yields

reasonable cause to believe that a union has committed certain specified ULPs, such as a work stoppage or picketing with an unlawful secondary objective, the Regional Director is required, on behalf of the Board, to seek an injunction from a federal district court to halt the alleged unlawful activity.

REPRESENTATION PROCEEDINGS

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial⁵. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer. Typically the petitioner requests an election to determine whether a union has the support of a majority of the employees in an appropriate bargaining unit and therefore should be certified or decertified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and conduct a secret-ballot election, if appropriate, addressing challenges and objections to the election subsequently, and thereafter issuing a certification.

In the processing of representation cases, the Board and the General Counsel have shared responsibilities. The Regional Offices, which are under the day-to-day supervision of the General Counsel, process representation petitions and conduct elections on behalf of the Board based on a delegation of authority made in 1961. As a result, the General Counsel and the Board have historically worked together in developing

⁵ Unlike ULP hearings where violations of the statute are litigated in an adversarial proceeding, representation case hearings are fact-finding proceedings regarding questions concerning representation.

procedures for the conduct of representation proceedings. The Board has ultimate authority to determine such matters as the appropriateness of the bargaining unit and to rule on any challenges and objections to the conduct of an election. The Regional Directors have been delegated authority to render initial decisions in representation matters, which are subject to Board review.

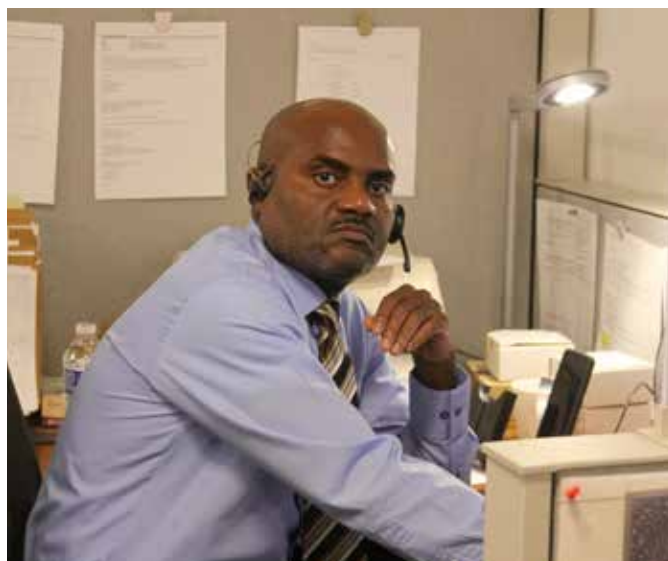
COMPLIANCE PROCEEDINGS

In order to obtain compliance with the Board's orders and settlement agreements, the General Counsel's staff must follow up to ensure that the results of the processes discussed above are enforced. NLRB staff deals with employees whose rights have been violated to calculate backpay, and works with respondents regarding notice postings, reinstatement of workers, disciplinary record expungement, withdrawal of unlawful rules or policies, and bargaining

remedies. Since Board orders are not self-enforcing, noncompliance or disputes on findings may require additional hearings or actions in the courts.

ADMINISTRATIVE FUNCTIONS

Section 3(d) of the Act assigns the General Counsel supervision over all attorneys employed by the Agency, with the exception of the ALJs, the Solicitor, the Executive Secretary and the attorneys who serve as counsel to the Board Members. The Board has also delegated to the General Counsel general supervision over the administrative, financial and personnel functions of the Agency.



CASEHANDLING HIGHLIGHTS

The NLRB acts only on those cases brought before it and does not initiate cases. While charges must be filed with the Agency to begin an investigation, if merit is found to the charge allegations, the Regional Director has delegated authority from the General Counsel to issue complaint, absent settlement.

All proceedings originate with the filing of charges or petitions by employees, labor unions, or private employers engaged in interstate commerce. During fiscal year 2017, the public filed 19,280 unfair labor practice charges of which 38.6 percent were found to have merit. Also, in FY 2017, the NLRB received 2,357 representation petitions, including 2,236 petitions to conduct secret-ballot elections in which workers in appropriate units select or reject unions to represent them in collective bargaining with their employers, as well as 38 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 4 petitions seeking amendment and 73 petitions seeking clarification of an existing bargaining unit, as well as 6 WH cases.

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees' free choice on union representation and by preventing and remedying statutorily defined unfair labor practices. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

The following cases highlight this philosophy and reflect the NLRB's mission of protecting democracy in the workplace:

NLRB v. Murphy Oil USA, Inc., et al. (S.Ct. No. 16-307)

On January 13, 2017, the Supreme Court granted the Board's petition for certiorari to review a decision of the United States Court of Appeals for the Fifth Circuit. The Board seeks to have the Court uphold the Board's rule, first announced in *D.R. Horton, Inc.*, 357 N.L.R.B. 2277 (2012), *enforcement denied in part*, 737 F.3d 344 (5th Cir. 2013), that an employer violates Section 8(a)(1) of the Act by maintaining arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum, arbitral or judicial, because such agreements limit the employees' right under the Act to engage in concerted litigation. Contrary to the position of the employer and the Fifth Circuit, the Board has found that such agreements are not shielded from NLRA liability by the Federal Arbitration Act (FAA), because their illegality under the NLRA renders them unenforceable under the saving clause of the FAA. After the Supreme Court's grant of review, the Sixth Circuit, granting the Board's application for enforcement of *Alternative Entertainment, Inc.*, 363 NLRB No. 131 (2016), joined the Seventh and Ninth Circuits in agreeing with the Board. The Second, Fifth, and Eighth Circuits have rejected the Board's view. The Board filed its brief on August 9, 2017. The case was consolidated for argument with private-party petitions seeking review of decisions from the Seventh and Ninth Circuits. On October 2, 2017, just after the close of the fiscal year, General Counsel Griffin argued the case on behalf of the Board.

Cooper Tire, 08-CA-087155

The court upheld the Board's finding that the Employer violated Section 8(a)(3) and (1) by

discharging an employee for making racially charged statements on a picket line.

The Board (then-Chairman Pearce and Members Hirozawa and McFerran), applied the Board's picket line misconduct test articulated in *Clear Pine Mouldings, Inc.*, 268 NLRB 1044 (1984), *enforced mem.*, 765 F.2d 148 (9th Cir. 1985), to find that the statements would not reasonably tend to coerce employees in the exercise of their rights under the Act, nor were they so egregious as to cause the employee to lose the Act's protections. The Board declined to defer to an arbitrator's award, which had concluded that the discharge was for "just cause" under a standard inconsistent with *Clear Pine Mouldings*.

On review, the court (Circuit Judges Benton and Murphy; Circuit Judge Beam, dissenting) upheld the Board's unfair labor practice finding as supported by substantial evidence and consistent with law. Rejecting the Employer's contentions, the court held that *Clear Pine Mouldings* was the appropriate test, and that the cases the Employer cited did not support its position. Read in the context of precedent, the court explained that the statements, although repugnant, were brief, not violent in character, and did not contain any overt or implied threats. The court also rejected the Employer's claim that reinstating the employee would conflict with Title VII. The court explained that the statements—even if they had been made in the workplace instead of on the picket line—would be insufficient to create a hostile work environment and, even so, that the Employer would not have been under a duty to fire the employee.

Rhino Northwest, LLC, 19-CA-160205

The court upheld the Board's standard for determining whether a proposed bargaining unit is an appropriate unit as clarified in *Specialty*

Healthcare & Rehabilitation Center of Mobile, 357 NLRB No. 83 (2011), *enforced sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

On review, the court rejected the Employer's argument that the *Specialty Healthcare* standard was contrary to the NLRA and Board precedent. The court confirmed that the overwhelming-community-of-interest test, which the Board adopted from the court's decision in *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008), was simply a clarification of existing Board law, and not a departure from it. With that holding, the court joined the seven other circuits that have reviewed and upheld the standard. *See Constellation Brands, Inc. v. NLRB*, 842 F.3d 784 (2d Cir. 2016); *FedEx Freight, Inc. v. NLRB*, 839 F.3d 636 (7th Cir. 2016); *NLRB v. FedEx Freight, Inc.*, 832 F.3d 432 (3d Cir. 2016); *Macy's Inc. v. NLRB*, 824 F.3d 557 (5th Cir.), *reh'g en banc denied* (2016), *cert denied*, 137 S. Ct. 2265 (2017); *FedEx Freight, Inc. v. NLRB*, 816 F.3d 515 (8th Cir.), *reh'g & reh'g en banc denied* (2016); *Nestle Dreyer's Ice Cream Co. v. NLRB*, 821 F.3d 489 (4th Cir. 2016); *Kindred Nursing Ctrs. East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

Reviewing the Board's application of the standard, the court held that substantial evidence supported the Board's finding that the Employer had not met its burden under *Specialty Healthcare*'s step two. Rather, the court noted that the record evidence supported the Board's finding given the significant distinctions between riggers and other event employees concerning wages, hours, training, supervision, equipment, and physical working conditions. Therefore, the court held that the Board reasonably concluded that those distinctions "sufficiently 'differentiate the employment interests' of [the] riggers and

non-riggers such that riggers may form their own bargaining unit,” quoting *Blue Man Vegas*, 529 F.3d at 424.

King Soopers, Inc., 27-CA-129598

The court approved, as reasonable and justified, the Board’s modification to its make-whole remedial framework to provide that an employee will be reimbursed for her reasonable search-for-work and interim employment expenses, instead of limiting such reimbursement to the amount of the employee’s interim earnings.

The court stated that “the Board is entitled to considerable deference in crafting remedies for unfair labor practices, and the reasons given by the Board to justify the new make-whole remedial framework pass muster.” Quoting large portions of the Board’s analysis in adopting the modified remedy, the court held that “the Board offered clear, reasonable, and compelling justifications for the new remedial framework,” and thus upheld the standard.

Pier Sixty, LLC, 02-CA-068612

The court upheld the Board’s finding that an employee’s Facebook post was protected activity and that the profanity included in the post did not cause him to lose the Act’s protection.

The court noted that, although it is not the exclusive framework for evaluating whether employee activities are protected, the Board recently has applied a nine-factor, totality-of-the-circumstances test in social media cases. Regarding the Employer’s defense, the court held that the Employer had failed to meet its burden of showing that the employee’s behavior was so egregious as to lose the Act’s protection, noting that several factors informed its conclusion. For instance, the court explained that, even though the employee’s Facebook

post was dominated by vulgar attacks on his supervisor and his supervisor’s family, it included workplace concerns—“management’s allegedly disrespectful treatment of employees, and the upcoming union election.” Further, the court noted that the record contains evidence that the Employer “consistently tolerated profanity among its workers,” and that the employee made the comments on Facebook, “an online forum that is a key medium of communication among coworkers and a tool for organization in the modern era.”

Lily Transportation Corp., 01-CA-118372

The court enforced the Board’s order issued against this transportation company. The Board (then-Chairman Pearce and Member McFerran; then-Member Miscimarra, concurring) found that the Employer was a successor employer and violated Section 8(a)(5) and (1) by refusing to bargain with the Union, as the representative of the drivers at the facility under the collective-bargaining agreement with the Employer’s predecessor.

The court concluded that *UGL-UNICCO*’s successor-bar doctrine was “an adequately explained interpretive change reflecting the Board’s judgment of a reasonable balance between the Section 7 right of employee choice and the need for some period of stability to give the new relationships a chance to settle down.” The court noted that the Board in *UGL-UNICCO* explained the reasons for changing course from the prior rule, “brought up to date the commercial reality ignored by the *MV Transportation* majority,” and changed “the factual consequences of the successor bar by modifying the terms on which the bar was previously imposed.”

Deep Distributors of Greater NY d/b/a/ The Imperial Sales, Inc., 29-CA-147909, et al.

The Board adopted the ALJ's findings that the Employer violated the Act when its counsel threatened employees about their immigration status during the course of the hearing. The Board further referred the Employer's counsel to the Investigating Officer for investigation under Section 102.177(d) and (e)(1) of the Board's rules, noting that disciplinary action may be appropriate. *Id.* at 3. The Board also adopted the ALJ's recommendation that the employer publish the Notice to Employees, noting the seriousness of the violations. *Id.* at 3 n. 6.

HealthBridge Management, LLC, 34-CA-012715 et al.

The Board unanimously affirmed all of the violations found by the Administrative Law Judge. For the main allegation that the Respondents violated Section 8(a)(5) and (1) by modifying the extant collective-bargaining agreement when they subcontracted their housekeeping employees for 15 months only to purport to rehire them at the wages and benefits of newly hired employees, the Board majority reasoned that the Respondents could not modify the wages and benefits both because (1) the Respondents never terminated their employment relationship with the housekeepers during the subcontract, and (2) the Respondents and the subcontractor were joint employers under the law predating *Browning-Ferris Industries of California*, 362 NLRB No. 186 (2015). Writing separately, Acting Chairman Miscimarra disagreed that the housekeeping employees remained employed by the Respondents during the subcontracting period under either theory advanced by the Board majority. Instead, he found that the Respondents had no apparent business reasons for the

short-duration subcontract and resumption of housekeeping operations other than to modify the accrued seniority of the housekeepers under the collective-bargaining agreement and the wages and benefits to which the seniority entitled them.

In finding the Respondents violated Section 8(a)(1) by threatening to call the police on employees, the Board majority reasoned the threat was in response to the employees' protected concerted activity, whereas Acting Chairman Miscimarra reasoned that it did not matter if the threat was in response to activity protected by the Act because the threat tended to coerce employees into accepting their unlawful loss of accrued seniority. The Board majority ordered a common notice be posted at all of the facilities at issue and that the notice be read aloud; Acting Chairman Miscimarra opposed both parts of the remedy.

The Board, unanimously, also affirmed the judge's conclusions that the Respondents violated Section 8(a)(5) and (1) by failing to give the contractually required 45 days' notice of layoffs, modifying the contractual benefit-eligibility criteria, unreasonably delaying their response to an information request, unilaterally changing the holiday-premium past practice, and unilaterally eliminating the inclusion of paid lunch breaks in overtime calculations.

RHCG Safety Corp., 29-CA-161261 et al.

In this consolidated unfair labor practice and representation case, the Board unanimously adopted the Administrative Law Judge's conclusion that the Respondent violated Section 8(a)(1) by interrogating an employee about his union activity. The majority (Members Pearce and McFerran) also adopted the judge's conclusion that the Respondent violated

Section 8(a)(1) and (3) by discharging an employee because it believed he was becoming involved with the Union. Dissenting in part, Chairman Miscimarra would have found that the employee's employment with the Respondent ended when he voluntarily took time off which precluded a finding that he was discharged.

Further, the Board unanimously adopted the judge's recommendation to set aside the election and direct a new election. The same majority found three independent bases for setting aside the election: (1) approximately 90 percent of the addresses on the voter list were inaccurate; (2) the list omitted the names of at least 15 eligible voters; and (3) the Respondent did not provide phone numbers for any of its employees on the list. In joining his colleagues to set aside the election, Chairman Miscimarra relied only on the finding of about 90 percent of the addresses on the voter list were incorrect. Contrary to the majority, Chairman Miscimarra would find that the omission of employee phone numbers from the voter list did not independently warrant setting aside the election because, in his view, the phone numbers were not available to the Respondent. He did not reach the question whether the omission of 15 employees from the list independently would require a new election.

Ellen's Stardust Diner, 2-CA-183919

Ellen's Stardust Diner, home of the world-famous singing servers in Times Square, New York City, settled a number of unfair labor practice allegations in late September 2017, just a week before a hearing on the issues was scheduled to go forward. The restaurant agreed to offer reinstatement to all 31 discharged employees, expunge the employee records of the alleged unlawful discharges, and post and mail notices to current and former employees.

Thirteen employees have accepted offers of reinstatement. The settlement agreement provides that backpay for all discharged employees will be adjudicated through a compliance hearing.

The charges alleged that Ellen's Stardust Diner had surveilled employees while they were engaged in protected concerted activities, interrogated employees regarding their protected concerted or union activities, interfered with employee social media postings, disabled employee workplace messaging, maintained an overly-broad confidentiality provision, solicited employee signatures for a petition to remove the Union as a representative, and discharged 31 employees because of their protected concerted and union activities.

VIUSA, Inc., 9-CA-075496

The Board approved a court-mediated compliance settlement agreement between the Employer and the Union in which the Employer agreed to pay \$21.6 million. The Board will distribute a portion of the money, \$14.4 million, as backpay to approximately 257 former employees of the Employer and individuals the Employer refused to hire at its former vehicle processing operation. The remainder, \$7.2 million, will be distributed to a pension fund as compensation for failing to make benefit contributions.

The complaint alleged that the Employer violated the National Labor Relations Act by refusing to hire Teamster-represented employees, recognizing the United Auto Workers as a minority union, refusing to recognize and bargain with Teamsters Local 89, and unilaterally establishing terms and conditions of employment for the employees that it did hire. On February 17, 2016, the Board issued its decision holding

that the Employer had violated the National Labor Relations Act, as alleged, and the Employer petitioned for review in the Sixth Circuit. Thereafter, the case settled.

Star Fisheries, Inc., 21-CA-178541

The Region facilitated a bilateral settlement agreement involving the employer's permanent replacement of striking employees based on an independent unlawful purpose after unsuccessful negotiations for a successor collective-bargaining agreement with the Union occurred, as well as threats to striking employees to abandon the union, unilateral withdrawal from employee fringe benefit funds, and refusal to reinstate striking employees upon their unconditional offer to return to work. After Board authorization to file a petition for injunctive relief, the district court granted the requested 10(j) relief in its entirety, including the immediate reinstatement of all striking employees. Thereafter, an agreement was reached that included new five-year collective bargaining agreements covering each of the two units, backpay in the amount of \$378,000, and reinstatement offers to all of the striking employees, most of whom returned to work.

Pacific Harvest, Inc., Apio, Inc., & USA Staffing, Inc., 31-CA-156523 et al.

In a consolidated organizing drive case involving 28 charges and three joint employers in which the violations included disciplining and suspending numerous employees, discharging 10 employees, laying off 43 employees and failing to recall them, the Region facilitated settlement agreements that included: reinstatement for seven of the discharged employees and front pay for the remaining three; and a Notice reading and mailing, and a posting of the NLRB's Employee Rights Notice for a period of one year, in English

and Spanish. As to the layoff allegation, the Employer provided some backpay and made immediate offers of reinstatement.

Tesoro Refining and Marketing, 19-CA0147090 and 21-CA-146968

The Region approved a bilateral settlement ending the largest refinery strike in 35 years. Under the agreement, the Employer paid more than \$8M to 769 employees, who engaged in the winter 2015 strike, and provided for their return to work.

Carey Salt Company, a subsidiary of Compass Minerals International, Inc., 15-CA-061694, et al

After a court judgment enforced the Board's order, an agreement was reached to remedy the unfair labor practices by paying 299 current and former employees a total of \$7.3M as compensation for backpay and benefit reimbursement.



PERFORMANCE HIGHLIGHTS

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives from the Board and the General Counsel work together in developing the comprehensive Strategic Plan and the Performance and Accountability Report. The NLRB's Strategic Plan was updated in FY 2014 and covers FY 2014 to FY 2018.

The NLRB's Strategic Plan states the Agency's strategic goals, objectives, initiatives, performance measures, and management strategies. There are two mission-related goals, and two support goals. The majority of the support goals are management strategy based and will be discussed at length in the Performance Section of this report.

The NLRB's performance measurement system has been highlight regarded for decades and modeled by other agencies to track case processing times. Most of the data collected tracks the time spent at each step of the case processing "pipeline". The Agency does not rely on outside sources for the data used in its performance management system. Each NLRB office is responsible for collecting and verifying performance measurement data. All of the NLRB's mission-related offices have full use of the NxGen system, which allows for real-time review of all case file materials and for consistent data reporting.

The mission-related goals are compiled using the Agency's NxGen Case Management system. This is an enterprise-wide database used by all divisions of Agency. Each division, including Headquarters and Regions, has data integrity reports which help isolate data errors. The Division of Operations Management oversees the Regional offices, which compile 75 percent of the

case-related statistics. Each quarter, Regions are required to run various data integrity reports in NxGen and report their findings to the Division of Operations-Management for review. For more information on the program evaluation please see page 54.

The NLRB's mission-related goals represent the core functions of the Agency in its enforcement of the NLRA. Rather than focus on the individual segments of the casehandling process, the performance measures for these goals focus on the time it takes to process an entire case from start to finish. They are outcome-based and aligned with the mission of the NLRB. The NLRB tracks the total time taken to accomplish the following: the processing of all ULP charges; all charges filed, the resolution of those ULP charges found to have merit; charge allegations evidencing statutory violations, and the resolution of all questions concerning representation.

The Performance Measures for Strategic Goal 1 address the timely resolution of ULP cases, including time spent on the case by Field and Headquarters Offices. On an annual basis, there are typically more than six times as many ULP cases than representation cases. Both types of cases often involve complicated issues for Regions to address.

The Performance measure for Strategic Goal 2 focuses on the time taken to resolve a representation case, from beginning to end, including time spent on the case by Field and Headquarters Offices. In representation cases, elections result from petitions filed by unions, employees, or employers seeking a secret ballot determination as to whether a majority of employees support union representation.

Goal 1 Performance Measure: *The percentage of all meritorious unfair labor practice charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.*

Year	Annual Goal	Actual Performance
FY 2014	82.5%	83.9%
FY 2015	82.5%	80.4%
FY 2016	82.6%	82.7%
FY 2017	82.7%	82.4%
FY 2018	82.8%	

Goal 3 Performance Measure: *The percentage of representation cases resolved within 100 days of filing the election petition.*

Year	Annual Goal	Actual Performance
FY 2014	85.3%	88.1%
FY 2015	85.4%	87.1%
FY 2016	85.5%	87.6%
FY 2017	85.7%	89.9%
FY 2018	85.8%	

Goal 2 Performance Measure: *The percentage of all unfair labor practice charges resolved by withdrawal, dismissal, settlement or compliance with a Board order or Court judgment within 120 days of the filing of the charge.*

Year	Annual Goal	Actual Performance
FY 2014	72.3%	72.3%
FY 2015	72.3%	70.6%
FY 2016	72.4%	70.8%
FY 2017	72.4%	68.9%
FY 2018	72.5%	



FINANCIAL AND SYSTEMS HIGHLIGHTS

The Office of the Chief Financial Officer (OCFO) is comprised of the Budget, Finance and Acquisition Management Divisions. This structure integrates and enhances Agency financial management. Specifically, the OCFO focuses on effectiveness and efficiency in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations.

The OCFO continuously seeks to infuse more discipline, structure, and internal control in the financial management lifecycle and throughout the financial management process. The Agency pursued additional initiatives in order to further gain operational and financial efficiencies. In FY 2017 the OCFO continued its effort to review all existing OCFO policies and update them to ensure they comply with the most current laws and regulations.

Below are some highlights from FY 2017 OCFO activities.

Charge Card Program

In an effort to produce efficiencies within the OCFO, the Charge Card Management Program was proposed to Leadership. The program will consolidate the Purchase Card and Travel Card Programs to allow for resources to be utilized effectively and efficiently in both programs. This consolidation will also provide uniform oversight and training requirements for the programs. Completion of the consolidation is set for the end of second quarter FY18. Afterwards, research will be conducted to determine whether or not the NLRB can benefit from managing its own Fleet Card Program instead of utilizing GSA's "wet leases" saving the Agency the fee GSA charges for managing "wet leases". The Fleet Card Program would

then also roll out under the Charge Card Management Program.

Incremental Funding

The Acquisition Management Branch issued Procurement Notice 2017-002a Funding Contract Actions August 2, 2017 in an effort to provide mandatory guidance for funding contracts inclusive of incrementally funding and awarding contracts subject to the availability of future appropriations. The federal appropriation process creates a complex environment for funding program requirements. When awarding and managing the contracts that support those requirements, acquisition personnel must be cognizant of both acquisition laws and appropriations laws. The uncertainty of the federal appropriation process, in terms of when an appropriation will be finalized for any given fiscal year, also adds complexity. Procurement Notice 2017-002a describes NLRB's agency-specific policies for funding contract actions.

Travel Policy

The OCFO drafted revised travel policies including local, temporary duty, relocations and travel cards. These policies comply with the Federal Travel Regulations (FTR) and include detailed scenarios to serve as examples for employees with travel questions. The Agency has made great progress in developing draft policies in FY17. The focus in FY18 will be on finalizing and issuing them to the Agency employees to gain full awareness and understanding of the requirements. Our target completion timeframe is in the third quarter of FY18.

Capitalized Property Policy

The OCFO is collaborating with the Agency property branch to codify existing informal procedures around capitalized property. The new policy is in the process of being drafted and

when published will include the disposal of assets and the roles and responsibilities of property custodians. Our target completion timeframe is in the third quarter of FY18.

SYSTEMS

The NLRB obtains the majority of its financial systems and services from the Department of the Interior's Interior Business Center (IBC), which is one of the Shared Service Providers of such functions for federal agencies. NLRB is responsible for overseeing IBC and ensuring that financial systems and internal controls are in place to fulfill legislated and regulatory financial management requirements. IBC provides the following systems:

- Oracle Federal Financials – Integrated system of record for all financial transactions.
- Federal Payroll and Personnel System (FPPS) – Personnel system of record, which interfaces with the Oracle system.
- E2 Solutions – eTravel system provided by Carlson Wagonlit, the NLRB's Travel Management Service, which also interfaces with the Oracle system.
- webTA – Web-based time and attendance system

After the successful introduction of both the Backpay Management System (BMS) and webTA the Agency has benefitted from the following operational efficiencies:

Backpay Management System (BMS)

Under certain circumstances, the Agency collects money from charged parties as a standard Board remedy whenever a violation of the NLRA has resulted in the loss of employment or earnings. These funds are held in a fiduciary account and then distributed to the affected parties (discriminatees) per the settlement agreement

or Board Order. The Agency completed a modernization effort of the BMS in FY16, which is used to track funds and create disbursement files that are transmitted to the Department of Treasury for the issuance of checks to discriminatees. The BMS also calculates federal tax withholdings including the Employer's Share of Social Security and Medicare.

What once was a manual process is now automated with data imported from an electronic file or database, with the goal of eliminating input errors in providing assurance that the correct discriminatees are paid the correct amounts. The data is also used to prepare a quarterly 941 form for the IRS and the annual W-2 and 1099-INT reports mailed to the discriminatees. The BMS maintains documentation to support each disbursement and has routing capabilities to ensure that all requests are properly approved.

The newly modernized system, which resides fully in the Office 365 cloud, is available to the appropriate Regional employees who are able to upload discriminatee information, track the status of the Backpay requests and receive timely status information on the progress of the entire Backpay process. This minimizes the need to contact the HQ office for case related inquiries.

WebTA

The Agency successfully implemented a new, web-based Time and Attendance (T&A) system, webTA, and has seen many efficiencies and successes. There has been a decrease in the amount of paperwork that Office managers/timekeepers must maintain, as well as a decrease in manual hours of office managers/timekeepers normally spent inputting time and attendance for employees. Employees have greater control over managing their

time and attendance records, and supervisors have greater control over managing and viewing their employees' time and attendance. Supervisors can also get a snapshot calendar view of all of their employees work schedules to include approved and requested leave. Since implementation the Agencies average failure rate is 3%. This means that only 3% of the NLRB's total population did not receive a pay check within a given pay period. This tool has allowed the agency to gain a significant level of efficiencies with the utilization of its Administrative Professional workforce. Employees serving in these positions are able to leverage their time on other Agency priorities and hiring decisions are made accordingly.

Oracle Business Intelligence Enterprise Edition (OBIEE)

The NLRB is investing in a new query and reporting tool available from Oracle. The tool will replace Discoverer, which will soon no longer be supported. The Oracle Business Intelligence Application (OBIA) is a business intelligence suite, including ad hoc query and analysis, dashboards, enterprise reporting, mobile analytics, scorecards and predictive analytics, on an architecturally integrated business intelligence foundation. The central component of the suite is Oracle Business Intelligence Enterprise Edition (OBIEE), which features a Common Enterprise Information Model for centralized metadata management, common query request generation and data access. We anticipate that these products will provide us with the information to enable our Agency to drive innovation, optimize operations, and deliver more relevant and timely information to decision makers.

ANALYSIS OF FINANCIAL STATEMENTS

The NLRB prepares annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP) for federal government entities and subjects the statements to an independent audit to ensure their integrity and reliability in assessing performance. The NLRB's financial statements summarize the financial activity and financial position of the Agency. The financial statements, footnotes, and the balance of the required supplementary information appear in the Financial Section of this Performance and Accountability Report.

Balance Sheet – The NLRB assets were \$40.8 million as of September 30, 2017. The Fund Balance with Treasury, which was \$32.1 million, represents the NLRB's largest asset at 78.8 percent. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years.

Property, Plant, and Equipment, which represents the NLRB's second largest asset at 19.6 percent, was \$8M and was primarily related to leasehold improvements and internal use software development costs. This was a \$2.6M decrease from the prior year due to fewer acquisitions while still incurring depreciation and amortization from existing property, plant, and equipment.

The NLRB liabilities were \$27.9M as of September 30, 2017. Liabilities consist of amounts owed to vendors, governmental trading partners, and Agency employees. Changes in Accounts Payable with both governmental trading partners – a decrease of 69.1 percent – and vendors – an increase of 20.3 percent – was related to a more stringent contract monitoring, payment, and closeout process. Employee unfunded annual leave was 49.1 percent of liabilities, the NLRB's

largest liability. The FECA Actuarial liability decreased by \$358,000, or 35 percent.

Statement of Net Cost – The NLRB’s appropriation is used to resolve representation cases or ULP charges filed by employees, employers, unions, and union members. Of the \$290.4 million net cost of operations in FY 2017, 89 percent was used to resolve ULP charges and 11 percent was used for representation case activities.

Statement of Changes in Net Position – The NLRB’s net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2016 to FY 2017, there was a change in net position of \$1.2M. This was, in part, due to a decrease in imputed financing for employee benefits, which was impacted by lowered staffing levels and cost factors for all pension plans. FY 2017 was not impacted by unique fiscal activities, as occurred in FY 2016. For FY 2016 these included a correction made to the beginning balance and a transfer of funds to cover discrepancies in the fiduciary account and the liability owed.

Statement of Budgetary Resources – The Statement of Budgetary Resources shows budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2017, the NLRB had available budgetary resources of \$284.1M,

the majority, \$274.2M, were derived from new budget authority. Obligations were \$277.5M for FY 2017, and total outlays for FY 2017 were \$274.3M. Other changes in the unobligated balance included a \$0.6M decrease due to the cancellation of annual appropriations. The status of budgetary resources had a \$314,000 increase in apportioned funds and a \$517,000 increase in unapportioned funds due to increased monitoring of obligations and payments from expired funds. The increased monitoring of obligations contributed to an increase of \$1.6M, or 44.2 percent, in recoveries of prior year unpaid obligations.

LIMITATIONS OF PRINCIPAL FINANCIAL STATEMENTS

The principal financial statements of the NLRB have been prepared to report the financial position and results of operations of the Agency, pursuant to the requirements of 31 U.S.C. 3515(b). While the statements have been prepared from the books and records of the entity in accordance with generally accepted accounting principles for federal entities and the formats prescribed by Office of Management and Budget, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

The statements should be read with an understanding that they are for a component of the U.S. Government, a sovereign entity.

COMPLIANCE WITH LAWS AND MANAGEMENT ASSURANCES

ANTIDEFICIENCY ACT

The Antideficiency Act prohibits federal agencies from:

- making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law;
- involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law;
- accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property; and
- making obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by Agency regulations.

There were no known violations of the Anti-Deficiency Act during FY 2017 at the NLRB.

DEBT COLLECTION IMPROVEMENT ACT

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA) requires agencies to periodically adjust civil penalties for inflation if either the amount of the penalty or the maximum penalty is set by law. In addition, the President is required to report certain information to Congress either annually or every five years. The FCPIA was amended by the Debt Collection Improvement Act of 1996 (DCIA). The DCIA amended the FCPIA to require each Federal agency to adopt regulations at least once every four years that adjust for inflation the maximum amount of the civil monetary penalties under the statutes administered by the agency.

DIGITAL ACCOUNTABILITY AND TRANSPARENCY ACT (DATA ACT)

The DATA Act expands the Federal Funding Accountability and Transparency Act (FFATA) of 2006 to increase accountability and transparency in federal spending, making federal expenditure information more accessible to the public. The goal of the DATA Act is to make federal spending more accessible, searchable, and reliable so taxpayers have the opportunity to understand the impact of Federal funding for Federal programs/ entities.

As required by the Office of Management of Budget (OMB) Memorandum M-15-12, issued on May 8, 2015, the National Labor Relations Board (NLRB) drafted a DATA Act of 2014 Implementation Plan in order to increase transparency of federal spending as required by the DATA Act and FFATA.

The Acquisition Management Branch (AMB) inputs contract and Interagency Agreements (IAAs) directly into the Federal Procurement Data System – Next Generation (FPDS-NG). The number of contracts and IAAs are less than 50, which has made this a manageable workload for the staff. The NLRB's service provider, IBC, has identified 47 of the required reportable data elements that will be provided to the Agency to report from existing systems. The remaining elements are being analyzed.

The Agency has taken steps to identify the data information needed to be captured for reporting. It has restructured the five major program activities and established the unique award ID as the Oracle Financial system generated Purchase Order number, and continues to submit object class and program activity data from the Oracle financial system to OMB.

FEDERAL INFORMATION SECURITY MANAGEMENT ACT (FISMA)

The Federal Information Security Management Act of 2002, as amended by the Federal Information Security Modernization Act of 2014, requires Federal agencies to ensure adequate security protections for Federal information systems and information. Under this act, Federal agencies must submit annual FISMA reports to OMB.

In the third quarter of FY 2017, the Agency worked with DHS and OMB to submit a response to the Presidential Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.

Both the Office of the Chief Information Officer (OCIO) and the Inspector General submit FISMA annual reports to DHS and OMB using a tool called CyberScope. The Agency also submits an annual letter to Congress, as required by FISMA.

GOVERNMENT CHARGE CARD ABUSE PREVENTION ACT

On October 17, 2014 the President signed an Executive Order (EO) directing the Federal government to establish and maintain safeguards and internal controls for the charge card program. The NLRB evaluated the charge card program as directed by the guidance provided in OMG Circular A-123 Appendix B, OMB Memorandum M-12-12 Promoting Efficient Spending to Support Agency Operations, and OMB Memorandum M-13-21 Implementation of the Government Charge Card Abuse Prevention Act of 2012. The effectiveness of the Agency's purchase card and travel card program was assessed through enhanced monitoring procedures to detect fraud, waste and abuse.

The Acquisition Management Branch implemented the Purchase Card Program Policy in September 2016, institutionalizing monitoring procedures and internal controls to detect and assist in preventing fraud, waste and abuse. Additionally, the Agency's Purchase Card Management Plan, which is updated annually, has been revised to include and hold the agency accountable for monitoring and detecting fraud, waste and abuse.

The Finance Branch runs monthly reports to monitor the account activity for all travel card holders. The Travel Desk Guide provides the guidance for running these reports in the Citibank Manager card system. The monthly reports monitor card usage for fraud, abuse, and delinquent payments which get reconciled against approved travel authorizations in the E2 travel system.

IMPROPER PAYMENTS INFORMATION ACT

The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012, requires agencies to review all programs and activities they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs. The NLRB's risk assessment indicated that the salaries and expenses program was not susceptible to significant improper payments. A detailed report of the NLRB's improper payments activities is presented in the Other Information section on page 106.

PROMPT PAYMENT ACT

The Prompt Payment Act was enacted in 1982 to ensure the federal government makes timely payments. Bills are to be paid within 30 days after receipt and acceptance of material and/or services – or – after receipt of a proper invoice whichever is later. When payments are not made timely, interest is paid. The Agency made late payments resulting in interest penalties of \$688.48 in FY 2017.

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT

The Federal Managers' Financial Integrity Act requires federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented management, assess the adequacy of those internal controls, identify needed areas of improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems. The annual statement of assurance and management control over financial application controls and financial reporting submitted by the NLRB's service provider follows this section.

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. The NLRB is committed to management excellence and recognizes the importance of strong financial systems and an internal control system that promotes integrity, accountability, and reliability.

Internal control systems are expected to provide reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws and regulations

In assessing whether these objectives are being achieved, the NLRB used the following standards in accordance with OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, dated July 15, 2016.

Control Environment	Creating and maintaining an organizational structure that promotes a high level of integrity and personal and professional standards, and sets a positive and supportive attitude toward internal controls through conscientious management
Risk Assessment	Identification and analysis of risks that could impede the achievement of Agency goals and objectives
Control Activities	Policies, procedures, techniques, and mechanisms to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results
Information and Communications	Ensures the Agency's control environment, risks, control activities, and performance results are communicated throughout the Agency
Monitoring	Assessing quality of performance over time to ensure that internal control processes are appropriate and effective

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 31 designated managers on an Agency-wide basis. The designated managers were responsible for conducting reviews of program operations, assisting program offices in identifying risks and conducting internal control reviews, issuing reports of findings, and making recommendations to improve internal controls and risk management.

In completing this annual review, designated managers used institutional knowledge gained from day-to-day operations, as well as reviewed Inspector General Audits and investigations, program evaluations, financial systems reports, annual performance plans, and previous management reviews.

Based thereon, senior management's assessment of the NLRB's internal controls is that controls are adequate to provide reasonable assurance in support of effective and efficient operations, reliable financial reporting, and compliance with laws and regulations.

The Statement of Assurance provided on page 35 is required by the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Control*.

FMFIA Section 2, Management Control

Section 2 of the FMFIA requires federal agencies to report, on the basis of annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2017 provide a reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA.

FMFIA Section 4, Financial Management Systems

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2017 in accordance with the FMFIA and OMB Circular A-127, *Financial Management Systems*, Section 7 guidance. The annual statement by the Chief of the Finance Branch, indicates that the NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the Department of Treasury. The Agency also reviews the SSAE-18's for all systems operated by IBC to ensure that independent auditors have also certified that the necessary controls are in place so the NLRB can rely on those systems.



Annual Statement of Assurance



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC

October 5, 2017

ANNUAL STATEMENT OF ASSURANCE

Management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB assessed the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with Office of Management and Budget (OMB) Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, the NLRB can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2017 was operating effectively, and no material weaknesses were found in the design or operation of the internal controls.

In accordance with the requirements of OMB Circular No. A-123, Appendix A, the NLRB assessed the effectiveness of internal control over financial reporting, which includes internal control related to the preparation of the annual financial statements, safeguarding of assets, and compliance with applicable laws and regulations governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements. The result of this evaluation provides reasonable assurance that the NLRB's internal control over financial reporting was operating effectively as of September 30, 2017.

The NLRB also conducted reviews of financial management systems. Based on the results of these reviews, the NLRB can provide reasonable assurance that the financial management systems comply with the applicable provisions of the FMFIA as of September 30, 2017.

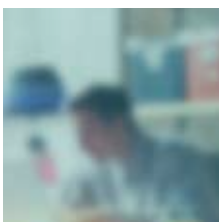
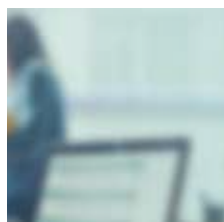
Philip A. Miscimarra
Chairman

Richard F. Griffin, Jr.
General Counsel



PERFORMANCE SECTION

**PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935**



PROGRAM PERFORMANCE

PERFORMANCE GOALS AND OBJECTIVES

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two mission-related goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA as efficiently as possible and in a manner that gives full effect to the rights afforded to all parties under the Act. The two support goals further enable the Agency to accomplish its mission. Please see Appendix D for the list of performance measures for the support goals, as well as the management strategies for all of the Agency goals.

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives of the Board and the General Counsel work together in developing one comprehensive Strategic Plan and Performance and Accountability Report.



MEASURING PERFORMANCE

One of the NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. While creating the updated Strategic Plan for FY 2014 to FY 2018, the Agency used the two mission-related goals from the previous Strategic Plan, as the foundation to build upon the traditional performance measurement approach that emphasizes individual segments of case processing to promote timely, efficient, and well-managed casehandling. The Agency then established two support goals that give a broader picture of how the Agency achieves its mission.

As to Agency success in bringing effective resolution to labor disputes in a timely manner, it should be noted that it is difficult for an agency, such as the NLRB, to measure "outcomes" in the sense intended by the authors of the Government Performance and Results Act (GPRA) and the Government Performance and Results Modernization Act (GPRAMA). In the representation case area, for instance, the Agency does not control or seek to influence the results of elections, but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all of the necessary requirements for conducting an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure that the Agency has established for the conducting of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees freely exercising their statutory rights as set out in the NLRA.

The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. While it is difficult to quantify by the number of ULPs, the Agency can quantify our commitment to resolve all disputes that are brought before us, and to provide a remedy and ensure that labor peace is restored. Noting that the Agency cannot *sua sponte* investigate actions of an employer or labor union without a charge being filed, the NLRB established two performance measures. The timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case are the focus of those performance measures.

The tables and narratives in this section show the proposed annual targets for performance measures and management strategies for the five-year period covered by the current Strategic Plan effective from 2014 through 2018 for the two mission-related goals. The actual results achieved for the mission-related goals for FYs 2011, 2012 and 2013 can be found in Appendix C.

This section also documents the performance regarding the support goals which are management strategy driven and presented in a summary format. The results achieved for the support goals in FY 2014 and 2015, can be found in Appendix C. These goals originated in FY 2014 and there is no historical data prior to that year.

Strategic Goal 1 (Mission): Promptly and fairly investigate, prosecute, and resolve unfair labor practices under the National Labor Relations Act.

Objectives:

1. Achieve established performance measures for the resolution of unfair labor practice charges.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner.

Measure: The percentage of all meritorious unfair labor practice charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

This measure focuses on meritorious (prosecutable) ULP cases, and the time taken to close them on compliance, including time spent on both the General Counsel and Board sides of the Agency. Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including reinstatement and the payment of backpay, to make whole those injured by the ULP.

Once a Regional Director has determined a ULP charge has merit, absent settlement, a complaint issues and the case is scheduled for a hearing before an ALJ. Settlement efforts continue throughout the course of the litigation. The vast majority of settlements are achieved before trial. Once the ALJ issues a decision, the decision can then be appealed to the Board. The Board, in turn, will consider the case and issue a final order resolving the ULP case. Ordinarily, the Regional Office will attempt to secure compliance in the

30-day period following the Board's order. If compliance cannot be obtained, the Region will refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which typically proceeds to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board or a reviewing court, or in extreme cases, in contempt proceedings.

ULP cases are closed on compliance when the remedial actions ordered by the Board or agreed to by the party charged with the violation of the NLRA are complete. This measure includes all litigated cases, including those appealed to the U.S. Courts of Appeal.

In FY 2017, the NLRB closed 82.4 percent of all prosecutable ULP cases in 365 days from the docketing of the charge.

GOAL NO. 1, TABLE 1

Percentage of ULP Cases Closed on Compliance Within 365 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	82.5%	82.5%	82.6%	82.7%	82.8%
ACTUAL	83.9%	80.4%	82.7%	82.4%	

Counting of days: The 365 days is calculated from the date the charge is docketed.

Measure: The percentage of all unfair labor practice charges resolved by withdrawal, dismissal, settlement or compliance with a

Board order or Court judgment within 120 days of the filing of the charge.

This measure focuses on the time taken to resolve a ULP charge, including time spent on both the General Counsel and the Board sides of the Agency.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates it for merit and decides whether to issue a complaint. If a charge is found to have no merit, which occurs in about two-thirds of the cases, it is dismissed if the charging party does not withdraw it. A dismissal can be appealed to the General Counsel. If a charge is found to have merit, a complaint issues, unless a settlement agreement is reached. If a case is not settled but instead is fully litigated before an ALJ, the Board will issue an order, which may be enforced or appealed to the US Court of Appeals.

A ULP case is resolved and closed when it has been completely processed, such that the charge allegations are investigated, and, where appropriate, remedied and there is no further action to be taken by the Agency.

In FY 2017, the NLRB closed 68.9 percent of all ULP cases within 120 days of the docketing of the charge.

GOAL NO. 1, TABLE 2

Percentage of ULP Charges Resolved Within 120 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	72.3%	72.3%	72.4%	72.4%	72.5%
ACTUAL	72.3%	70.6%	70.8%	68.9%	

Counting of days: The 120 days is calculated from the date the charge is docketed.

Management Strategies: In addition to the Quality Review Program of the Division of Operations-Management, which is highlighted in the Program Evaluation section on page 54, and which ensures that all matters before the Agency are handled in a fair and consistent manner, the following additional steps are undertaken to assist with compliance:

- The Division of Operations-Management and the Division of Enforcement Litigation actively work with the Regions to identify cases pending before the Board that are suitable for resolution through the Board's Alternative Dispute Resolution (ADR) program.
- The Compliance Unit conducts an ongoing review of the compliance case inventory and promptly reviews ALJ decisions, Board decisions and pending Board ADR and court mediation proceedings to ensure that the Region has the resources necessary to deal with difficult or challenging compliance issues. The assistance may range from assigning a person to be available for consultation to having a person or team, either in Headquarters or in another Region, perform all of the work or a particular task in the case.
- The Board tracks on an ongoing basis which Regions have cases in the ADR program, and which parties requested that the cases be placed in the ADR program.

Strategic Goal No. 2 (Mission): Promptly and fairly resolve all questions concerning representation of employees.

Objectives:

1. Achieve established performance measures for the resolution of all questions concerning representation of employees.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner.

Measure: The percentage of representation cases resolved within 100 days of filing the election petition.

This measure focuses on the time taken to resolve a representation case, including time spent on both the General Counsel and the Board sides of the Agency.

An employer, labor organization, employee, or group of employees may file a petition in an NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with parties toward a goal of reaching a voluntary agreement regarding conducting an election, as opposed to a Regional Director directing an election, if appropriate. This measure reflects the percentage of representation cases closed within 100 days. A case is closed when the question as to whether or not a labor organization will represent employees has been finally resolved.

Representation cases are resolved and closed in a number of ways:

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early

stage in processing may be based on a variety of reasons, for example: the employer does not meet the Agency's jurisdictional standards; the petitioner fails to provide an adequate showing of interest to support the petition; and/or the petition was filed in an untimely manner.

- Cases may also be withdrawn by the petitioner for a variety of reasons, such as lack of sufficient support among the bargaining unit.
- The majority of cases are resolved upon issuance of either a certification of representative (the union prevails in the election) or a certification of results (the union loses the election).
- In a small percentage of cases, there are post-election challenges or objections to the election. The case is not closed until the challenges and/or objections have been resolved.

In FY 2017, the NLRB exceeded its goal of 89.9 percent by 4.2 percent to close all representation cases within 100 days from the filing of the petition.

GOAL NO. 2, TABLE 1

Percentage of Representation Cases Resolved Within 100 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	85.3%	85.4%	85.5%	85.7%	85.8%
ACTUAL	88.1%	87.1%	87.6%	89.9%	

Counting of days: The 100 days is calculated from the date the petition is formally docketed.

Management Strategies: The following memos outline the steps taken to assist with compliance.

OM 17-12: Revisions to the Representation Casehandling Manual. The memo was sent to all Regional Directors, Officers-in-Charge and Resident Officers from the General Counsel announcing the Representation Casehandling Manual had been updated. The revisions to the Manual reflect guidance in light of the modified representation rules that went into effect on April 14, 2015.

OM 17-17: Dates for Hearings and Statement of Position Due Dates and Attachment. This memo was sent to all Regional Directors, Officers-in-Charge and Resident Officers from the General Counsel regarding the changes to the procedures applicable to processing representation cases with a focus on specifying the date for scheduling a pre-election hearing in RC, RD, and RM cases and for the Statement of Position due. A chart setting forth such dates through May 31, 2018 is attached to the memorandum.

Strategic Goal 3 (Support): Achieve Organizational Excellence

Objectives:

1. Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish our mission.
2. Promote a culture of professionalism, mutual respect, and organizational pride.

Strategic Goal 3 is a management strategy base goal. There are two objectives that have their own set of initiatives. Each initiative has a set of management strategies that were created in order to show the different offices of the Agency that are involved in achieving the goal. For the full outline of the goal please see Appendix D-3 on page 148.

Organizational Excellence ensures that all organizational systems are aligned and functioning cohesively together. Continuous commitment to assessing and addressing organizational excellence enables the Agency to proactively enhance the organization's service.

Accomplishments in FY 2017 include:

Employee Development

- The Office of Human Resources (OHR) continues its partnership with the Office of Personnel Management (OPM) on the implementation and rollout of the new Agency-wide performance management reporting system, USA Performance. In September 2017, performance plans for all non-bargaining unit employees were fully integrated.
- The Agency continued to comply with OPM's hiring reform efforts, including the 80-day hiring model.
- Domestic Violence, Sexual Assault, and Stalking Awareness training was released to all employees and 1,452 employees have completed the training. Continuity of Operations Training was released and 1,275 employees have completed the training. The Personal Security On-the-Job Course completion is being monitored to ensure new field employees complete it within the first 90 days on the job.
- OEEO collaborated with a workgroup consisting of OHR and OED, to engage in pre-decisional involvement discussions with the NLRBU and the NLRBPA to develop and implement mandatory training for managers and supervisors on the Agency's Reasonable Accommodation Policy. The workgroup has developed a comprehensive training module and anticipates launching the training in FY 2018.

- The GC Mentoring committee, which includes OEE0, has been focused on developing ways to measure the success of the Agency's mentoring program by ensuring that the mentoring program supports Agency diversity and inclusion goals, and exploring ways to develop mentoring into a more robust individual development vehicle. OEE0's collaboration with this workgroup led to the development and launch of a revised survey for mentees, mentors and mentoring program managers that will enable management to gauge the impact of the program.

Workforce Management

- The Agency instituted a series of trainings that provides pertinent information on the history of disability in the workforce, current workplace laws and regulations, as well as information on Agency recruitment. HR Staff has taken OPM's HR University training entitled "A Roadmap to Success: Hiring, Retaining and Including People with Disabilities" and "Issues, Impacts and Implications of an Aging Workforce" by the Institute on Employment and Disability.
- OEE0 led the Agency-wide effort to develop a plan for the Agency to develop into a model federal EEO employer as envisioned and implemented through the EEOC's Management Directive 715 (MD715). OEE0 conducted quarterly meetings with a cross section of organizational units, including the Office of Human Resources (OHR), the Office of Employee Development (OED) and the Division of Operations-Management (OPS). Each office was required to identify, develop, measure and report out on its progress on issues related to barriers to full opportunity. These efforts resulted in a more relevant and responsive MD715 report and plan.
- OEE0 collaborated with OGC and OED to develop and launch mandatory training for all Agency managers and supervisors on issues and best practices in supporting transgender employees' transition in the workplace. The training was also made available on a voluntary basis to all Agency employees.
- The Human Capital Planning Office (HCPO) worked on developing a report detailing a deep dive analysis of the changing composition of the workforce and shifting work patterns/trends, including demographics, diversity, size, attrition, performance, and training, to inform core competency requirements for the future workforce.
- The Security Branch completed 23 percent of the backlogged investigation this fiscal year.

Motivation

- The HCPO conducted 18 EVS organizational assessments with Agency heads and senior executives EVS results with a focus on identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enables the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and engaging in action planning. During those meetings, the HCPO also discussed the two EVS Agency-wide strategic areas of focus (*effective leadership and communication*) and its impact on improving EVS scores and the workforce culture. As a result, Agency leadership endorsed an action plan, with a particular focus on enhancing employee engagement, commitment and satisfaction.
- The HCPO developed an online Employee Suggestion Box making it easier for

employees to now go online and submit suggestions electronically.

- The HCPO held the first ever Sensing Session where non-supervisory personnel within the Division of Administration (DoA) assembled to discuss the customer experience based on feedback received from customers. The sessions examined mapping the customer experience and looking for fresh service ideas to improve it; getting front-line employees from each of the functional branches to collaborate on identifying the causes of problems and finding innovative solutions; and coordinating activities to maximize the speed of service from the customer's point of view. Through this method, DoA employees had an active voice in developing innovative solutions and the sessions marked an important milestone in employee engagement and communication efforts linked to the EVS. The HCPO plans to rollout Sensing Sessions to other organizations with the Agency.
- OHR also administered the annual Administrative Professional Program where six (6) Agency employees were selected for recognition.

Strategic Goal No. 4 (Support): Manage agency resources in a manner that instills public trust.

Objectives:

1. Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.
2. Evaluate and improve the Agency's outreach program
3. Conduct all internal and external Agency business in an ethical and timely manner.

Strategic Goal 4 has both measures and management strategies. There are three objectives that have their own set of initiatives. Each initiative has a set of measures and/or management strategies that show the different offices of the Agency that are involved in achieving the goal. For the full outline of the goal please see Appendix D-4 on page 149.

Federal employees are charged with managing programs and federal funds in an efficient and effective manner. As stewards of these federal funds, the Agency is making every effort to instill public trust. Accomplishments in FY 2017 include:

Information and Technology:

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

The NxGen System presently manages:

Internal users	1,379
Cases	331,074
Case Actions of the Agency	1,115,809
Documents, images, and videos, each linked to its Action and Case.....	8,977,578

The Agency expanded electronic distribution of case documents for 15 document types, resulting in 626 documents being sent to the USPS electronically and in savings for the Agency.

The Agency uses an electronic filing program (E-File) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received.....	51,369
Number of Documents Received.....	82,459
Number of cases filed thru E-Filing Charges and Petitions	23,356
Number of Board and ALJ Decisions E-Served.....	563
Total Number of parties E-Served Decisions.....	35,936
Number of E-Deliveries of Case Documents	4,848

The total number of case documents available for public access in FY 2017 was 1,146,108.

In FY 2017, the Agency expanded the use and capabilities for electronic filing to enable parties to E-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed through the Charge and Petition Wizard was 662.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the 564 document types available to the public.

- The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- The team automated and launched the process of authoring, editing, approval and publishing of Operations-Management memorandums.
- The team completed the automation of the training request and approval process by developing a web-based form with routing, approval, data storage for advanced reporting, and records management.

- The Agency awarded its UCC contract on September 24, 2014. Through FY 2017, 49 Field Offices, the two existing datacenters, two new voice datacenters, and the Agency's Headquarters were upgraded to the new network and field offices were fully migrated to Skype for Business.
- In FY 2017, the OCIO deployed over 1,020 iPhone 6's and 6-Pluses to the Field Offices.

Financial Management:

- To enhance internal controls of the purchase card program, AMB, in coordination with the Budget Office, continues to enforce a process by which quarterly target amounts for purchase card spending are sent to each Headquarters and Regional offices. These amounts are disseminated at the beginning of each quarter to the Division of Operations Management. Operations Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the Regional offices. In addition to quarterly

target amounts sent to the Headquarters Offices, all Headquarters PCHs submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.

- In April 2017, AMB, in coordination with the OCIO, issued a large IDIQ award for Information Technology (IT) services, and ensured strategic sourcing opportunities were carefully effectuated. The result of this acquisition provided the Agency with a framework to promote an agile systems development life cycle, and empowered the Agency's IT personnel to adopt new technologies and automate processes which resulted in increased proficiencies and budgetary savings.
- AMB continued to utilize the bulk purchasing program for paper and toner across the Agency. The program allows for better coordination,

distribution and cost-savings of required items. In FY 2017, bulk orders took place in November, February, May and August.

- AMB implemented Split Pay for travel payments, which allows vouchered transactions which utilized the agency charge card to pay Citibank directly.

As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned businesses.

From October 1, 2016 – September 30, 2017, a total of \$16M and 339 contract actions were reported within the Federal Procurement Data System (FPDS). Out of this amount, \$6.7M and 176 actions went to small businesses; approximately 41.7 percent of contract dollars and 51 percent of contract actions were awarded to small businesses.

Category	Goal	2017	2016	2015	2014	2013
Small Business	23%	41.7%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	7.47%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	28.33%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	1.62%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	23.33%	3.43%	2.13%	2.27%	0.84%

Agency Outreach

The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.

The Agency provided direct outreach to immigrant populations by:

- Speaking in Spanish and other languages at events organized by the consulates or other community and non-profit groups, such as the Mexican Embassy, Philippine Embassy, Ecuadoran Consulate, El Salvador Consulate, Labor Alliance Committee on Minority Affairs, Colorado Central Region Farmworker Project, West Harlem Development Corporation, and Workplace Justice Project, Justice, Equality & Safety in the Workplace, to educate the public about the NLRA
- Participating in Labor Rights Week activities organized by the Mexican Embassy and Consulates at various locations throughout the country
- Speaking at naturalization ceremonies
- Participating in interviews on Spanish-language radio stations
- Staffing booths at informational fairs
- Responding to inquiries from individuals who seek consular services
- Participating in Platicas en Consulado (Consul on Wheels)
- Participating in a Univision phone bank
- Speaking at the Federacion De Clubes Zatecanos event sponsored by the Mexican consulate
- Speaking at Filipino Workers Center SAMA-SAME Network Meetings

Other Agency activities directed at the immigrant population include:

- Speaking at naturalization ceremonies to new citizens
- Participating in Asian Public Interest and Public Service Panels
- Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes, including a delegation from South Korea

Activities directed at the youth population include:

- Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers' statutory rights and Board processes
- Holding mock trials for schools to demonstrate how an unfair labor practice trial is conducted
- Leading discussions at the Hanna Boys Center/ La Luz Center
- Participating in Youth to Youth Apprentice Training program

The Agency continued to partner with DHS, DOL, OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.

The Agency has joined with other state and federal agencies by:

- Participating in "listening sessions" coordinated by worker advocacy groups.
- Participating in Wage Theft Task Force discussions
- Meeting with the Illinois Attorney General's Office

- Meeting with the Michigan Employment Relations Commission
- Participating in a forum sponsored by City of Chicago Department of Human Services
- Participating in a community outreach program sponsored by U.S. Rep. Susan Brooks
- Participating in the EEOC Training Institute Technical Assistance Program Seminar
- Participating in the California Association of Labor Relations Officers annual conference
- Participating in an FMCS open house
- Providing outreach to the New York State Department of Labor Anti Retaliation Task Force
- Participating in SBA Ombudsman roundtables and listening sessions
- Participating in DOL Prevailing Wage Seminar
- Distributed guidance to all supervisors and managers highlighting the restrictions that apply when a supervisor serves as a campaign coordinator and/or keyworker for the Combined Federal Campaign (CFC).
- Suggested updates to the Agency's Pro Bono program to comply with government ethics regulations and the Agency's IT policy.
- Completed a Structural Assessment of the Ethics Office to maximize resources.
- Developed and distributed a Hatch Act webcast to all Agency employees.
- Answered extensive Hatch Act hypotheticals submitted by the NLRBPA.
- Distributed a memo which was intended to remind supervisors and managers that they should not encourage their subordinates to participate in outside activities or causes, including political advocacy events and activities. The memo explained that this conduct would implicate the regulations in the Standards of Conduct concerning misuse of position, as well as the Hatch Act, if the conduct involves political activity. The DAEO discussed this memo with Agency Leadership at a General Counsel staff meeting.
- Assisted the Office of the Chief Financial Officer (OCFO) in the review of the Agency's travel policy to ensure that it is consistent with 31 U.S.C 1353 which covers Travel Reimbursement from a Non-Federal Source.

Ethics

The Ethics Staff continued to meet with the General Counsel's office to review the status of all ethics projects and to discuss notable ethics issues.

In coordination with the Office of the General Counsel, the Ethics Staff:

- Developed and distributed guidance concerning OPM's updated Combined Federal Campaign (CFC) regulations to all Agency employees.
 - Met with Agency leadership to discuss the limitations placed on CFC fundraising.
 - Distributed an updated Speaking Engagements DAEO memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations.
- During FY 2017, the Ethics Staff:
- Developed a comprehensive ethics orientation package that is used in the onboarding of

NLRB Political Appointed Senate Confirmed employees (PAS).

- Provided customized ethics briefing to newly appointed Board Members.
- Met with newly appointed Regional Directors to discuss how the Ethics Office supports each Regional Office.
- Provided Operations Management with guidance concerning the ethics limitations placed on NLRB employees who are engaged in outreach activities.
- Provided Ethics Briefings for the Professional Exchange Program and Honors Attorney Orientation.
- Developed ethics training materials that will be distributed through the Agency's SharePoint page in the first quarter of FY 2018.
- Developed comprehensive post-employment guidance which emphasizes an attorney's recusal obligations after departure from the Agency.
- Continued to participate in the Office of Human Resources (OHR) New Hire Onboarding.
- Continued to use the "Ethical Highway" webpage to archive guidance documents, newsletter articles, Tips of the Month, and Job Aids.

Measure:	Goal	2017	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	92%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%	100%



- All financial disclosure reports filed in FY 2017 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.
- The annual financial disclosure cycle began on January 1st. NLRB filers use electronic filing systems to comply with the Office of Government Ethics' filing requirement.
- In mid-January, the Ethics Office began to receive Public (OGE 278e) and Confidential (OGE 450) Financial Disclosure reports for CY 2016. In all cases, the Ethics Office completed the review of each report within 60 days of receipt and notified the filer of any real or potential conflicts.

During FY 2017, the Agency has completed its review of:

- 30 Annual Confidential Financial Disclosure Reports (OGE 450)
- 84 Annual Public Financial Disclosure Reports (OGE 278e)
- 9 New Entrant Public Financial Disclosure Reports (OGE 278e)

- 119 Monthly Transaction Reports (OGE 278T)
- 13 Termination Reports (OGE 278)

Note: Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

Internal and External Audit Responses:

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations.
- OCFO responded to the Data Act audit.
- OCIO responded to one C-CAR data call regarding Kaspersky software.
- OCIO responded to one C-CAR data call regarding WannaCry Ransomware.
- OCIO responded to Risk Management Assessment data calls related to Executive Order 13800 "Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure," and OMB Memorandum M-17-25.

FOIA

Measure:	2017	2016	2015	2014
Respond to initial FOIA requests within 20 working days	46.36 days 35.9 %	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	10.5%	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	20 working days	32.35 working days	24 working days	20 working days

- Based on the information in the FOIAonline, the Agency responded to initial FOIA requests in an average of 46.36 working days for requests received from October 1, 2016 to September 30, 2017. The Agency received 2,217 requests this period and responded to 798 of those requests in 1-20 days. Thus, 35.9 percent of the FOIA requests were processed within the 20-day statutory time period.
- The Agency sought an extension of time to process a request beyond the 20-day period by sending a letter to the requester taking an additional ten working days to respond to the request in approximately 10.5 percent of the FOIA requests received during the fiscal year 2017.
- The Agency received 11 FOIA Appeals from October 1, 2016 to September 30, 2017 and responded to ten of these appeals. The Agency responded to eight of those appeals in 1-20 days. Thus, 72.7 percent of the FOIA appeals were processed within the 20-day statutory time period.
- The Agency did not seek an extension of time for the FOIA appeals received from October 1, 2016 to September 30, 2017.
- All FOIA requests and appeals are now processed in Headquarters. In FY 2017, the influx of new staff members, most of whom required significant training until they became proficient in handling requests, and difficulties associated with technology, which has since been upgraded, affected FOIA response rates.



FACTORS AFFECTING AGENCY PERFORMANCE

Various factors can affect Agency performance as a whole, in addition to each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors include case intake, settlements, board member vacancies, the potential effect of case precedent and statutory changes, nationwide work-related activities by external entities, technological advances, and economic fluctuations.

CASE INTAKE

The Agency's FY 2017 case intake totals 21,637 and includes 19,280 unfair labor practice (ULP) cases and 2,357 representation cases. Our Board agents effectively and efficiently process all cases that are brought to the Agency by the general public. Comprehensive and complex matters that come before the Agency are often attributable to external factors, such as: ongoing nationwide efforts to improve the wages and working conditions of workers in the retail and fast food industries; evolving employment relationships in the gig economy; the increased prevalence and evolving tools and usage by employees of technology and social media inside and outside of the workplace to discuss terms and conditions of employment with one another, and the related handbook provisions and workplace rules generated therefrom; expanded use of mandatory arbitration clauses in employment matters; bankruptcies; jurisdiction over enterprises; increased understanding of statutory application in non-union workplaces; and difficult questions concerning single, joint, and successor employer relationships, and supervisory status, as well as defining employees covered under the NLRA.

SETTLEMENTS

The initial processing and disposition of new case filings in the Regional Offices drives the intake for other stages of the casehandling pipeline. Over the past few years, more than 90 percent of those cases in which merit is found are settled without formal litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is, of course, not entirely subject to the Agency's control. When the process becomes formal and litigation takes over, Agency costs increase. The Agency calculates that every one-percent drop in the settlement rate costs the Agency more than \$2 million.

BOARD MEMBER TERMS

The staggering of Board member terms and the filling of a vacant seat by an individual who will not be a Board member for a full-term impairs Board productivity, as successive Board members often have to get up to speed on the same case matter. The Board is now up to full composition.

POTENTIAL EFFECT OF STATUTORY/ RULEMAKING CHANGES

As a general matter, changes in the law affect NLRB operations and could have consequences on the Agency's case load. Rulemaking and statutory changes, for example, could lead to an increase in ULP charges and/or election petitions filed with the Agency, with corresponding increases in investigations and proceedings conducted by Agency personnel. Statutory changes may also directly mandate additional litigation by the Agency, e.g., seeking injunctive relief in federal district court.

RELIABILITY OF PERFORMANCE DATA

PROGRAM EVALUATION

The NLRB uses various techniques and mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. The Board regularly tracks the status of all of its cases to determine performance against yearly targets that support the Agency's strategic goals and measures. A standing committee composed of senior management officials, including, among others, the Deputy Chief Counsels of each of the Board Members and the Executive Secretary, meets periodically to review the status of cases, to prioritize cases, and to develop lists of cases that the Board Members will jointly focus on in order to facilitate the issuance of decisions in those cases. These representatives also report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic casehandling management system that captures all case events in a database from which case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss case priorities and the overall processing of cases.

The NLRB regularly monitors settlement and litigation success rates of ULP cases. In FY 2017, Regional offices settled 95 percent of meritorious ULP cases and won 84 percent of ULP and Compliance matters in whole or in part. A total of over \$73.6M was recovered in backpay, fines, dues and fees and over 1,700 employees were offered reinstatement. The Division of Judges closed 170 hearings, issued 184 decisions and achieved 453 settlements. The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. In FY 2017, the United States Courts of Appeals ruled on Board decisions in 91 enforcement and review cases. Of those

cases, 69.2 percent were enforced or affirmed in whole or in part. As to monitoring representation cases, in FY 2017, 98.5 percent of all initial elections were conducted within 56 days of filing.

Further, the General Counsel has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality Review Program of the Division of Operations-Management reviews ULP, representation, and compliance case files annually to ensure that they are processed in accordance with substantive and procedural requirements, and that the General Counsel's policies are implemented appropriately. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's initiatives and priorities, Impact Analysis prioritization of cases, and compliance with Agency decisions. Additionally, personnel from the Division of Operations-Management review all complaints issued in the Regions to ensure that pleadings are correct and supported. They also conduct site visits during which they evaluate Regional casehandling and administrative procedures. In addition, to assess the quality of litigation Committee reviews all ALJ and Board decisions that constitute a significant loss. In addition, the Division of Operations Management requires Regions to run a battery of NxGen data integrity reports and to certify their NxGen data on a quarterly basis. Moreover, the Regional Offices' performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities is incorporated into the Regional Directors' annual performance appraisals.

The Division of Operations-Management regularly reviews case decisions to determine

the quality of litigation. Other Divisions and offices, such as the Office of Appeals, Division of Advice, Division of Legal Counsel and Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of field offices. Top Agency management also meets regularly with relevant committees of the American Bar Association to obtain feedback on their members' experiences practicing before the NLRB.

In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before district courts with regard to injunction litigation. In FY 2017, the Injunction Litigation Branch received 113 cases from Regional Offices to consider for discretionary injunctive relief under Section 10(j) of the Act. The Board authorized 37 cases and Regional Offices filed 10(j) petitions in 30 cases. The "success rate", i.e., the percentage of authorized Section 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 75 percent. The Office of the General Counsel continues to focus its attention on "nip-in-the-bud cases", where a nascent organizing campaign is being unlawfully squelched, and on first outreach bargaining and successor cases, where the

relationship between the employer and the union is most fragile.

As previously mentioned, while there are a few outcome-based performance measures associated with the two support goals, the majority of them are management strategy driven. The Agency collects quarterly performance metrics and strategies on the two Agency support goals, as well as the NxGen reports for the mission-related goals. The metrics and strategies are tracked and monitored throughout the year. The compiled data is then presented in this document.

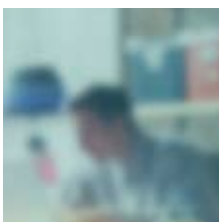
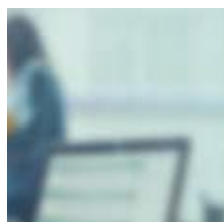
The data reported by OCIO come from NxGen. The FOIA Branch maintains their case data in FOIAonline, which is a FOIA tracking and processing web tool. FOIAonline also generates annual, quarterly, and other workload reports to effectively monitor all aspects of FOIA casehandling. The Ethics Office uses an electronic spreadsheet to track when an employee reaches out to the Office with an ethics inquiry. The Office logs the question and collects several pieces of data about the inquiry to include the date that the inquiry was made and the date that guidance was provided. The spreadsheet calculates the number of days between the two dates.





FINANCIAL SECTION

**PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935**



A MESSAGE FROM THE CHIEF FINANCIAL OFFICER

November 9, 2017



Mehul Parekh
Chief Financial Officer

As the Chief Financial Officer of the NLRB, I am pleased to forward the Fiscal Year (FY) 2017 Performance and Accountability Report. To meet our fiscal responsibilities, NLRB dedicates itself to achieving the highest standards of reporting and transparency. This PAR provides a comprehensive review of how the public funds entrusted to the Agency are utilized.

We take great pride in announcing that, in FY 2017, we received an unmodified audit opinion on our financial statements. I am also excited to report that the two significant deficiencies identified by our independent auditors in the areas of financial reporting and accounting discrepancies resulting from insufficient resources and inadequate controls over undelivered orders, accounts payable, and expenditures have been remediated to a great extent. I would like to take this opportunity to truly acknowledge the Office of the Chief Financial Officer (OCFO) team that helped in achieving this result.

The OCFO was created just over five years ago. Since that time, the financial, budget, and procurement staffs have engaged in a collective effort to overcome the financial management challenges by establishing a management approach based upon effective controls and transparency. We recognize that a sound financial management approach involves continual assessment and refinement of such processes, procedures, and internal controls, and we continually review, assess and refine operations.

Throughout FY 2017, the focus continued to be on the ongoing efforts of the OCFO to enhance processes and controls to ensure sound financial management and leadership. From developing and updating policies for incremental funding of obligations, local travel, temporary duty travel, as well as implementing the new time and attendance system (webTA) and preparing for the implementation of Oracle Business Intelligence Enterprise Edition and Applications, this has been a successful, yet challenging, year in maintaining our momentum on all fronts. Key examples of these challenges include the change in administration, looming budget cuts and shortfalls, and staff attrition in areas where institutional knowledge and expertise are essential.

The biggest challenge for the Agency will continue to be its funding levels. The NLRB's budget authority has been flat-lined at \$274.2M for several years while Federal pay raises have been approved by Congress. Continued budget constraints and uncertainty in fiscal years 2018 and 2019 will impact our ability to address increasing costs of operations and to conduct the necessary planning, specifically in the area of information technology and essential services used by the field to meet mission requirements. Ongoing continuing resolutions will simply add to that level of uncertainty. Additional challenges exist in the area of maintaining the level of positions necessary to manage the core functions and the projected caseload for the Agency. Such inability to adequately plan and prepare, due to uncertainty of funding levels, will limit our efforts in maximizing the utilization of Agency funding on mission requirements.

As we look forward into FY 2018, we face a number of short and long-term challenges. Year after year, the Agency has made improvements in financial statement preparation, development of policies and procedures, and establishment of internal controls. Considering the results of the recent audit, the OCFO will remain committed to drive process improvement, transparency, and implementation of sound strategies to address the audit findings and recommendations issued to the NLRB. The OCFO will also reach out to other agencies as necessary to keep abreast of best practices and to learn from their experiences and expertise.

On a longer term outlook, the Agency will go through a major transition to onboard new leadership positions on the Board, as well as the General Counsel, as their appointment terms expire. Keeping the Agency moving through all the budgetary and operational phases during such a transition will be critical to accomplishing many of the challenges and improvement opportunities discussed herein.

I look forward to continuing my effort of collaboration and coordination with the NLRB leadership and organizational units to provide sound advice and to develop and implement strategies to ensure ongoing refinement of organizational priorities, requirements, and controls. My efforts in the coming year will also focus on managing and addressing enterprise risks as the Agency prepares to address the challenges of today.



INDEPENDENT AUDITOR'S REPORT

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 6, 2017

To: Philip A. Miscimarra
Chairman

Jennifer Abruzzo
Acting General Counsel

From: David P. Berry 
Inspector General

Subject: Audit of the National Labor Relations Board Fiscal Year 2017 Financial Statements
(OIG-F-22-18-01)

This memorandum transmits the audit report on the National Labor Relations Board (NLRB) Fiscal Year (FY) 2017 Financial Statements with the Management's Response.

The Accountability of Tax Dollars Act of 2002 requires the NLRB to prepare and submit to Congress and the Director of the Office of Management and Budget (OMB) annual audited financial statements. We contracted with Castro & Company, an independent public accounting firm, to audit the financial statements. The contract required that the audit be done in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and Bulletin 17-03, *Audit Requirements for Federal Financial Statements*, issued by OMB.

In connection with the contract, we reviewed Castro & Company's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with *Government Auditing Standards*, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. Castro & Company is responsible for the attached auditor's report dated November 6, 2017, and the conclusions expressed in the report. However, our review disclosed no instances where Castro & Company did not comply, in all material respects, with generally accepted government auditing standards.

The audit report states Castro & Company's unmodified opinion with regard to the FY 2017 and 2016 financial statements.

With regard to the Management Response dated November 3, 2017, and the apparent disagreement regarding the internal control findings, as stated in the audit reports, a deficiency in internal control exists when the design or operation of a control does not allow management or

employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A deficiency can exist in both the design and operation of an internal control:

A deficiency in design exists when:

- A control necessary to meet the control objective is missing; or
- An existing control is not properly designed so that, even if the control operates as designed, the control objective would not be met.

A deficiency in operation exists when:

- A properly designed control does not operate as designed; or
- The person performing the control does not possess the necessary authority or competence to perform the control effectively.

A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

In applying the standards as set forth in the American Institute of Certified Public Accountants' *Statements on Auditing Standards* and the *Government Auditing Standards*, Castro & Company determined that the lack of required updated policies and procedures over security management and assessments, a security assessment that contained known or knowable misstatements of material fact, and the lack of a Contingency Plan and testing for information systems for achieving continuity of operations for mission/business functions during FY 2017 rose to the level of Material Weaknesses in both design and operation.

As noted in the Internal Control Report, the lack of formal policies and procedures increases the risk that the security practices are unclear, misunderstood, and improperly implemented; and that controls will be inconsistently applied in order to keep the NLRB information technology (IT) systems safe. Processing and storing financial information in weak or unsafe IT systems puts the NLRB's financial information and resources at risk of fraud, waste, and abuse. In addition, discrepancies may exist but go undetected and uncorrected, thereby causing the financial information to be misstated. Effective policies and procedures and management monitoring to ensure they are properly implemented greatly increases the NLRB's ability to proactively identify and resolve issues that could result in material misstatements in financial accounting and reporting records.

In addition, as stated in the Internal Control Report, during unscheduled disruptions in operations, the NLRB may not be able to recover and continue operation of all necessary systems and functions in a timely manner. Without an effective contingency plan in place for the general support system, the NLRB's financial data is at risk of being lost due to an unscheduled disruption. If lost financial data cannot be adequately restored, it could materially affect the financial statements.

Additionally, we found that NLRB management misquoted what the Internal Control Report stated in their response. The Report does not state that "the Agency has a variety of

sound practices in place regarding information technology policies and procedures,” as noted in Management’s response. The Report states that although NLRB “had some sound security practices in place, it did not have approved policies supporting practices placed in operation.”

With regard to the Management Response for the finding related to the contractor oversight and security awareness training, National Institute of Standards and Technology Special Publication 800-53: PS-7 Third-Party Personnel Security requires that an agency establish personnel security requirements for third-party providers. The fact that the NLRB’s Office of the Chief Information Officer (OCIO) did not have a definitive list of contractors during our audit indicates a lack of contractor oversight, and therefore the OCIO could not track contractors’ compliance with security awareness training or the on/off-boarding processes.

With regard to the lack of a contingency plan and testing, the finding is not related to the Disaster Recovery Plan; as stated in the Management Response. It addresses the lack of a Contingency Plan as required by the Federal Information Security Modernization Act of 2014 (FISMA). Formulating a Contingency Plan is not only an improvement to the Agency’s operations but is required to be in compliance with FISMA. The Internal Control Report states that while the Disaster Recovery Plan does address contingency plans related to the NLRB’s information technology systems, its scope is limited to only catastrophic system failures and thus does not adequately address contingency procedures for all scenarios. In addition, it does not cover the NLRB’s contingency responsibilities over the financial and payroll systems provided to them by the Department of the Interior. Any Contingency Plan put together by the Agency subsequent to the FY 2017 audit will be assessed during the FY 2018 audit.

As mentioned above, the issues identified above were a result of audit procedures conducted during our audit of the financial statements for FY 2017; therefore, corrective action initiated by the NLRB subsequent to the audit would be assessed as part of the FY 2018 audit.

We appreciate the courtesies and cooperation extended to Castro & Company and our staff during the audit.



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Independent Auditor's Report

Inspector General
National Labor Relations Board

We have audited the accompanying balance sheets of the National Labor Relations Board (NLRB) as of September 30, 2017 and 2016 and the related statements of net cost, changes in net position, and budgetary resources for the fiscal years then ended.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and, Office of Management and Budget (OMB) Bulletin No. 17-03, *Audit Requirements for Federal Financial Statements*. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the agency's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the NLRB as of September 30, 2017 and 2016, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Independent Auditor's Report
Page 2

Required Supplementary and Other Information

U.S. generally accepted accounting principles require that the information in the *Required Supplementary Information*, including *Management's Discussion and Analysis*, be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. The supplementary information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the basic financial statements. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The information presented in the Messages from the Chairman, General Counsel, and Chief Financial Officer, list of Board Members, Other Accompanying Information, and Appendices is presented for purposes of additional analysis and are not required as part of the basic financial statements. Such information has not been subjected to auditing procedures applied by us in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

Other Reporting Required by Government Auditing Standards

In accordance with U.S. *Government Auditing Standards* and OMB Bulletin No. 17-03, we have also issued our reports dated November 6, 2017, on our consideration of NLRB's internal control over financial reporting and the results of our tests of its compliance with certain provisions of laws, regulations, and other matters that are required to be reported under *Government Auditing Standards*. The purpose of those reports is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. Those reports are an integral part of an audit performed in accordance with U.S. *Government Auditing Standards* and OMB Bulletin 17-03 in considering the NLRB's internal control and compliance, and should be read in conjunction with this report in considering the results of our audit.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, U.S. Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

Castro & Company, LLC

November 6, 2017
Alexandria, VA



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Independent Auditor's Report on Internal Control

Inspector General
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB) as of and for the year ended September 30, 2017, and have issued our report thereon dated November 6, 2017. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 17-03, *Audit Requirements for Federal Financial Statements*.

In planning and performing our work, we considered the NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of the NLRB's internal control, determining whether controls had been placed in operation, assessing control risk, and performing tests of the NLRB's controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not to express an opinion on the effectiveness of the NLRB's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the NLRB's internal control over financial reporting. We limited our internal control testing to those controls necessary to achieve the objectives described in the Office of Management and Budget (OMB) Bulletin No. 17-03, *Audit Requirements for Federal Financial Statements*. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982 (FMFIA), such as those controls relevant to ensuring efficient operations.

Our consideration of internal control over financial reporting was for the limited purposes described in the preceding paragraph and would not necessarily identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected, on a timely basis. We consider the deficiencies described below to be material weaknesses.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. During our audit we did not identify any deficiencies in internal control that we consider to be significant deficiencies. However, significant deficiencies may exist that have not been identified.

Independent Auditor's Report on Internal Control
Page 2

The NLRB's response to the findings identified in our audit is described in the accompanying Audit Response Letter. The NLRB's response was not subject to auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

We noted less significant matters involving internal control and its operations which we have reported to NLRB management in a separate letter dated November 6, 2017.

This report is intended solely for the information and use of the management and the NLRB Office of Inspector General, OMB, the Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in dark ink that reads "Castro & Company, LLC". The signature is written in a cursive, slightly slanted style.

November 6, 2017
Alexandria, VA

MATERIAL WEAKNESSES

I. Lack of Information Technology Updated Policies and Procedures over Security Management and Assessments and Unreliable Security Assessment for the LAN/WAN General Support System

The head of each Federal agency is responsible for providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems, as described in the Federal Information Security Modernization Act (FISMA) of 2014 (PL 113-283, 44 USC 3554)¹. Additionally, agency heads are responsible for reporting on the adequacy and effectiveness of the information security policies, procedures, and practices of their enterprise. FISMA requires Federal agencies to improve the security of Information Technology (IT) systems, applications, and databases. Each Federal agency must develop, document, and implement a program to provide security for the data and IT systems that support its operations and assets. The National Institute of Standards and Technology (NIST) develops IT security standards and guidelines for FISMA. Federal agencies must follow these rules, which require compliance reporting by each agency. The NLRB is required to comply with FISMA.

The NLRB security controls were not effectively monitored or adequately documented, and system assessments and authorizations were not performed in accordance with Federal standards. The NLRB Office of the Chief Information Officer (OCIO) security personnel forwarded to the Chief Information Officer (CIO) a security assessment of the NLRB's LAN/WAN system with knowledge that the security assessment incorrectly stated that control policies and procedures were in place and were operating effectively when, in fact, they were not. The CIO then issued an Authority to Operate (ATO) for the LAN/WAN. Because it is the CIO's responsibility to approve the NLRB's IT security controls, he should have known that the security assessment that he was relying upon for the LAN/WAN ATO contained incorrect statements, and that the incorrect statements were material to his decision to accept the risks associated with the operation of the NLRB's LAN/WAN system.

During our review of the NLRB's policies and procedures and its independent security assessment of the LAN/WAN General Support System, we found the following:

Outdated Policies

NIST Special Publication (SP) 800-53, Security and Privacy Controls for Federal Information Systems and Organizations, Revision 4 has 18 controls specifically addressing policies and procedures. Policies and procedures are principles and rules to guide and direct employees and contractors in the performance of fulfilling their duties. Although NLRB had some sound security practices in place, it did not have approved policies supporting practices placed in operation. NLRB began the process of writing new policies and procedures for the NIST SP 800-53, Revision 4 control families, but no policy and procedures had been finalized, approved, or issued by the NLRB.

¹ The Federal Information Security Modernization Act of 2014 amends the Federal Information Security Management Act of 2002 to: (1) reestablish the oversight authority of the Director of the Office of Management and Budget (OMB) with respect to agency information security policies and practices, and (2) set forth authority for the Secretary of the Department of Homeland Security to administer the implementation of such policies and practices for information systems.

Independent Auditor's Report on Internal Control
Page 4

NIST SP 800-53 was originally issued in 2005 and was last updated in 2013. The NLRB's policies and procedures currently in place predated the NIST SP 800-53 with the primary policy, Administrative Policies and Procedures Manual IT-1: Computer Security Program Information Systems Security Policy (INFOSYSEC), dating back to 2003.

Unreliable Security Assessment

- As part of the NIST Risk Management Framework (RMF), the NLRB is required to assess the effectiveness of controls in the System Security Plan (SSP) by an independent assessor. As such, the NLRB issued a contract to perform its Fiscal Year (FY) 2017 annual security assessment of the LAN/WAN General Support System. The Security Assessment Assessor stated in its report that controls were in place and in operation while both the NLRB OCIO security personnel and the Contractor's Assessor had full knowledge that some controls had not been implemented. The SSP and Security Assessment Report stated that the NLRB was following the policies and procedures controls for each of the 18 NIST SP 800-53 control families. Our testing found these policies and procedures were being developed; none of the policies and procedures were finalized, approved, or issued. The NLRB OCIO security personnel scheduled the completion of the policies and procedures for the 4th quarter of FY 2017 and the 2nd quarter of FY 2018. Both the NLRB OCIO and Assessor were aware of the draft status of those policies and procedures. Nonetheless, the assessment was certified stating that the policies and procedures were in place rather than documenting the lack of finalized policies and procedures. As a result, the security assessment contained incorrect information. The NLRB CIO then certified the ATO without noting the deficiency.
- The Assessor was required to test for effectiveness of control activities. For the controls we examined, the Assessor did not indicate they tested for effectiveness. In the assessment, the Assessor described the general control process that may have been in place. The Assessor did not specify that they selected samples to test individual control activities, nor did they specify the results of samples tested, if any. In addition, the Assessor did not test all required control activities listed under a control. For example, in testing control AC-2: Account Management, the Assessor did not mention the four (4) control enhancements included in AC-2. There is no evidence that these control enhancements were tested.
- During our review of the Security Assessment contract, we noted that the NLRB also agreed to the performance of additional tasks in that contract, which included performing Disaster Recovery Plan updates and testing, risk assessments, policy guidance and/or development, and transition planning. These additional services impaired the Contractor's independence in performing the security assessment. The Contractor must be impartial from the NLRB. Impartiality implies that the Contractor is free from any perceived or actual conflicts of interest pertaining to the development of procedures, operations, or management of information systems under assessment. In addition, impartiality implies that the Contractor is free from any perceived or actual conflicts of interest pertaining to the testing of the operating effectiveness of the security controls. To achieve impartiality, the Contractor should not have created a mutual or conflicting interest with the NLRB where it was conducting the assessment and evaluating its own work.

Contractor Oversight

The NLRB OCIO did not have a definitive list of contractors; therefore, they could not track contractors' compliance with security awareness training or the on and off-boarding processes. NLRB utilized an online training system to provide employees and contractors user access to several online training resources and to track completion of the required security awareness training for NLRB contractors. However, NLRB relied largely on manual processes initiated by administrative offices for tracking security awareness training and offboarding requirements for contractors.

Security Awareness Training

NLRB's Information Technology Security Education, Awareness and Training (ITSEAT), Standard and Implementation Guidelines states that "NLRB may elect to provide annual refresher material to contractors, however, the responsibility remains with the contractor to ensure annual refresher materials are provided to his or her employees as a part of the contract agreement. To assign this responsibility to the contractor, the following contractual language may be inserted into new and/or existing statements of work...The contractor must, at a minimum, certify that any personnel who perform work under this contract effort must have received annual IT Security awareness briefings as defined in NIST Special Publication 800-16 'Information Technology Security Training Requirements: A Role- and Performance-Based Model.' Certification of this training must be provided to the Associate CIO, IT Security no later than 45 calendar days after the training has occurred."

This control alone is insufficient to meet NIST requirements. It is NLRB's responsibility to monitor and enforce security controls.

Security assessments are important components of an organization-wide strategy. They determine whether security controls are implemented correctly, operating as intended, and producing the desired outcomes. They provide the basis for confidence in the effectiveness of security controls. Security assessments are a critical component supporting a system's ATO.

The Government Accountability Office's *Standards for Internal Control in the Federal Government* states:

People are what make internal control work. The responsibility for good internal controls rests with all managers. Management sets the objectives, puts the control mechanisms and activities in place, and monitors and evaluates the control. However, all personnel in the organization play important roles in making it happen. All personnel need to possess and maintain a level of competence that allows them to accomplish their assigned duties, as well as understand the importance of developing and implementing good internal control. Management needs to identify appropriate knowledge and skills needed for various jobs and provide needed training, as well as candid and constructive counseling, and performance appraisals.

Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or

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operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.

Management designs control activities in response to the entity's objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks. As part of the control environment component, management defines responsibilities, assigns them to key roles, and delegates authority to achieve the entity's objectives...Control activities are an integral part of an entity's planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results...They include a wide range of diverse activities such as approvals, authorizations, verifications, reconciliations, performance reviews, maintenance of security, and the creation and maintenance of related records which provide evidence of execution of the activities as well as appropriate documentation.

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.

Management establishes physical control to secure and safeguard vulnerable assets. Examples include security for and limited access to assets such as cash, securities, inventories, and equipment that might be vulnerable to risk of loss or unauthorized use. Management periodically counts and compares such assets to control records.

The NIST SP 800-53 Revision 4 requires that for each of the 18 control families that organizations develop policies and procedures. NIST SP 800-53 Revision 4 states,

1. Policies and Procedures:
The organization:

- a. Develops, documents, and disseminates to [*Assignment: organization-defined personnel or roles*]:
 1. policies that addresses purpose, scope, roles, responsibilities, management commitment, coordination among organizational entities, and compliance; and
 2. Procedures to facilitate the implementation of the policies and associated specific controls; and
- b. Reviews and updates the current:
 1. Access control policy [*Assignment: organization-defined frequency*]; and
 2. Access control procedures [*Assignment: organization-defined frequency*].

Supplemental Guidance: Policy and procedures reflect applicable federal laws, Executive Orders, directives, regulations, policies, standards, and guidance.

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NIST SP 800-53 Revision 4, CA-2 Security Assessments, has Control Assessment CA-2(1), Independent Assessors, which states:

The organization employs assessors or assessment teams with [*Assignment: organization- defined level of independence*] to conduct security control assessments.

Supplemental Guidance: Independent assessors or assessment teams are individuals or groups who conduct impartial assessments of organizational information systems. Impartiality implies that assessors are free from any perceived or actual conflicts of interest about the development, operation, or management of the organizational information systems under assessment or to the determination of security control effectiveness. To achieve impartiality, assessors should not: (i) create a mutual or conflicting interest with the organizations where the assessments are being conducted; (ii) assess their own work...

NIST Special Publication 800-53A *Assessing Security and Privacy Controls in Federal Information Systems and Organizations*, Revision 4, Section 2.3 Building an Effective Assurance Case states,

Building an effective assurance case for security and privacy control effectiveness is a process that involves: (i) compiling evidence from a variety of activities conducted during the system development life cycle that the controls employed in the information system are implemented correctly, operating as intended, and producing the desired outcome with respect to meeting the security and privacy requirements of the system and the organization; and (ii) presenting this evidence in a manner that decision makers are able to use effectively in making risk-based decisions about the operation or use of the system.

NIST SP 800-53, Security and Privacy Controls for Federal Information Systems and Organizations, Revision 4 states,

AT-2 Security Awareness Training

Control: The organization provides basic security awareness training to information system users (including managers, senior executives, and contractors):

- a. As part of initial training for new users;
- b. When required by information system changes; and
- c. Assignment: organization-defined frequency] thereafter.

PS-7 Third-Party Personnel Security

Control: The organization:

- a. Establishes personnel security requirements including security roles and responsibilities for third-party providers;

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- b. Requires third-party providers to comply with personnel security policies and procedures established by the organization;
- c. Documents personnel security requirements;
- d. Requires third-party providers to notify [Assignment: organization-defined personnel or roles] of any personnel transfers or terminations of third-party personnel who possess organizational credentials and/or badges, or who have information system privileges within [Assignment: organization-defined time period]; and
- e. Monitors provider compliance.

Supplemental Guidance: Third-party providers include, for example, service bureaus, contractors, and other organizations providing information system development, information technology services, outsourced applications, and network and security management. Organizations explicitly include personnel security requirements in acquisition-related documents. Third-party providers may have personnel working at organizational facilities with credentials, badges, or information system privileges issued by organizations. Notifications of third-party personnel changes ensure appropriate termination of privileges and credentials. Organizations define the transfers and terminations deemed reportable by security-related characteristics that include, for example, functions, roles, and nature of credentials/privileges associated with individuals transferred or terminated. Related controls: PS-2, PS-3, PS-4, PS-5, PS-6, SA-9, SA-21.

The NLRB did not have adequate policies and procedures to ensure information system security due to the lack of management oversight over the security management program. The NLRB relied on outdated policies, to include policies dating back to 2003 that do not incorporate the most current NIST requirements. While the NLRB had begun to create some policies and procedures that conform to NIST SSP 800-53 Revision 4, they were still either in draft format or have not been started at all.

In addition, the NLRB CIO was not adequately managing his subordinate security personnel. The OCIO security personnel knowingly accepted and then used a security assessment that contained material misstatements of fact, and provided it to the CIO to use in authorizing the systems to operate.

It is apparent that NLRB was not aware or disregarded the need for a central control of contractor security requirements. The NLRB's current procedure tracked all users' security requirements through initial training, role-based training, and offboarding, but it did not specifically keep track of contractors. Often control of contractors' security requirements warranted communication and coordination with other administrative offices within an agency.

Without a strong tone at the top and proper management oversight to support the NLRB's IT system, there is a risk that control activities may not be appropriately designed or implemented. The establishment of written, formal policies and procedures is critical in assuring that a system of internal controls is followed.

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The lack of formal policies and procedures increases the risk that the security practices are unclear, misunderstood, improperly implemented, and controls are inconsistently applied in order to keep the NLRB IT systems safe. Processing and storing financial information in weak or unsafe IT systems puts the financial information and resources at risk of fraud, waste, and abuse occurring. In addition, discrepancies may exist but go undetected and uncorrected, thereby causing the financial information to be misstated. Effective policies and procedures and management monitoring to ensure they are properly implemented greatly increases the NLRB's ability to proactively identify and resolve issues that could result in material misstatements in financial accounting and reporting records.

Without a proper independent assessment to determine the effectiveness of its security controls, the NLRB will not be able to determine the security posture of its operations and protect its operations.

Without a complete centralized list of contractors, NLRB cannot effectively monitor its contractors to ensure compliance with security awareness training or the on and off-boarding processes. There is an increased risk that some contractors may not be aware of NLRB security practices. The lack of monitoring of contractors leaving the Agency can also increase the risk that the contractors may not be removed timely from access lists and that NLRB property, including badges, are not returned timely, which could result in unauthorized access to the NLRB's general support system that houses its financial information.

Recommendations:

We recommend that NLRB management:

1. Establish, approve, and disseminate IT policies and procedures to all employees as required by NIST SP 800-53, *Security and Privacy Controls for Federal Information Systems and Organizations*, Revision 4. Final policies and procedures should have a clear audit trail showing signatures of individuals responsible for final approval and be dated accordingly.
2. Obtain an independent assessor to perform tests of effectiveness on all NLRB's SSP in accordance with NIST Special Publication 800-53A, *Assessing Security and Privacy Controls in Federal Information Systems and Organizations*, Revision 4.
3. Review the knowledge, skills, and abilities of the OCIO security personnel and make a determination of whether individuals in those positions are skilled to perform IT security functions.
4. Develop a personnel policy that defines the NLRB's responsibility for maintaining a complete list of contractors that is periodically reviewed to ensure completeness and accuracy.

II. Lack of a Contingency Plan and Testing for Information Systems for Achieving Continuity of Operations for Mission/Business Functions

Contingency planning addresses both information system restoration and implementation of alternative mission/business processes when systems are compromised. We examined the NLRB's Disaster Recovery Plan version 9.6, dated November 22, 2016. While the Disaster Recovery Plan does address contingency plans related to the NLRB's information technology systems, its scope is limited to only catastrophic system failures and thus does not adequately address contingency procedures for all scenarios. In addition, it does not cover the NLRB's contingency responsibilities over the financial and payroll systems provided to them by the Department of the Interior. Although these systems are provided by a third-party, the NLRB is responsible for restoring connectivity and normal operations in the event of disruptions at the NLRB. The Disaster Recovery Plan makes explicit references to an IT Contingency Plan and a NLRB LAN/WAN Contingency Plan. Despite multiple requests for these documents, the NLRB was not able to provide them and we determined that neither an overall Contingency Plan nor an Information System Contingency Plan exists or is in place. NIST SP 800-53, Revision 4 requires that an organization develop and test a Contingency Plan annually, without a plan in place, no testing has been performed.

NIST SP 800-53 Rev. 4, CP-2 Contingency Plan states,

Control: The organization:

- a. Develops a contingency plan for the information system that:
 1. Identifies essential missions and business functions and associated contingency requirements;
 2. Provides recovery objectives, restoration priorities, and metrics;
 3. Addresses contingency roles, responsibilities, assigned individuals with contact information;
 4. Addresses maintaining essential missions and business functions despite an information system disruption, compromise, or failure;
 5. Addresses eventual, full information system restoration without deterioration of the security safeguards originally planned and implemented; and
 6. Is reviewed and approved by [Assignment: organization-defined personnel or roles];
- b. Distributes copies of the contingency plan to [Assignment: organization-defined key contingency personnel (identified by name and/or by role) and organizational elements];
- c. Coordinates contingency planning activities with incident handling activities;
- d. Reviews the contingency plan for the information system [Assignment: organization-defined frequency];

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- e. Updates the contingency plan to address changes to the organization, information system, or environment of operation and problems encountered during contingency plan implementation, execution, or testing;
- f. Communicates contingency plan changes to [Assignment: organization-defined key contingency personnel (identified by name and/or by role) and organizational elements]; and
- g. Protects the contingency plan from unauthorized disclosure and modification.

Supplemental Guidance: Contingency planning for information systems is part of an overall organizational program for achieving continuity of operations for mission/business functions. Contingency planning addresses both information system restoration and implementation of alternative mission/business processes when systems are compromised. The effectiveness of contingency planning is maximized by considering such planning throughout the phases of the system development life cycle. Performing contingency planning on hardware, software, and firmware development can be an effective means of achieving information system resiliency. Contingency plans reflect the degree of restoration required for organizational information systems since not all systems may need to fully recover to achieve the level of continuity of operations desired. Information system recovery objectives reflect applicable laws, Executive Orders, directives, policies, standards, regulations, and guidelines. In addition to information system availability, contingency plans also address other security-related events resulting in a reduction in mission and/or business effectiveness, such as malicious attacks compromising the confidentiality or integrity of information systems. Actions addressed in contingency plans include, for example, orderly/graceful degradation, information system shutdown, fallback to a manual mode, alternate information flows, and operating in modes reserved for when systems are under attack. By closely coordinating contingency planning with incident handling activities, organizations can ensure that the necessary contingency planning activities are in place and activated in the event of a security incident. Related controls: AC-14, CP-6, CP-7, CP-8, CP-9, CP-10, IR-4, IR-8, MP-2, MP-4, MP-5, PM-8, PM-11.

Control Enhancements:

(1) Contingency Plan | Coordinate with Related Plans

The organization coordinates contingency plan development with organizational elements responsible for related plans.

Supplemental Guidance: Plans related to contingency plans for organizational information systems include, for example, Business Continuity Plans, Disaster Recovery Plans, Continuity of Operations Plans, Crisis Communications Plans, Critical Infrastructure Plans, Cyber Incident Response Plans, Insider Threat Implementation Plan, and Occupant Emergency Plans.

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NIST SP 800-53 Rev. 4, CP-4 Contingency Plan Testing states,

Control: The organization:

- a. Tests the contingency plan for the information system [Assignment: organization-defined frequency] using [Assignment: organization-defined tests] to determine the effectiveness of the plan and the organizational readiness to execute the plan;
- b. Reviews the contingency plan test results; and
- c. Initiates corrective actions, if needed.

Supplemental Guidance: Methods for testing contingency plans to determine the effectiveness of the plans and to identify potential weaknesses in the plans include, for example, walk-through and tabletop exercises, checklists, simulations (parallel, full interrupt), and comprehensive exercises. Organizations conduct testing based on the continuity requirements in contingency plans and include a determination of the effects on organizational operations, assets, and individuals arising due to contingency operations. Organizations have flexibility and discretion in the breadth, depth, and timelines of corrective actions. Related controls: CP-2, CP-3, IR-3.

The NLRB did not develop, approve, and disseminate Contingency Planning policies and procedures that provided guidance in the development and testing of a Contingency Plan.

The NLRB relied extensively on IT system controls to initiate, authorize, record, process, summarize, and report financial transactions in the preparation of its financial statements.

During unscheduled disruptions in operations, the NLRB may not be able to recover and continue operation of all necessary systems and functions in a timely manner. Without an effective contingency plan in place for the general support system, the NLRB's financial data is at risk of being lost due to an unscheduled disruption. If lost financial data cannot be adequately restored, it could materially affect the financial statements.

Recommendations:

5. Develop an overall contingency plan to include all NLRB systems, including the financial, payroll, Backpay and LAN/WAN systems.
6. Ensure that the contingency plan is tested, at a minimum once a year and that results of the test are reviewed so that corrective action can be initiated, if needed.



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Independent Auditor's Report on Compliance with Laws and Regulations

Inspector General
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB) as of and for the year ended September 30, 2017, and have issued our report thereon dated November 6, 2017. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 17-03, *Audit Requirements for Federal Financial Statements*.

The management of NLRB is responsible for complying with laws and regulations applicable to NLRB. We performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in the Office of Management and Budget (OMB) Bulletin No. 17-03, *Audit Requirements for Federal Financial Statements*, including the requirements referred to in the Federal Managers' Financial Integrity Act of 1982 (FMFIA). We limited our tests of compliance to these provisions, and we did not test compliance with all laws and regulations applicable to NLRB.

The results of our tests of compliance with applicable laws and regulations, and government-wide policies, described in the preceding paragraph identified instances of noncompliance that are required to be reported under *Government Auditing Standards* or OMB guidance, and are described in the following paragraphs.

The head of each Federal agency is responsible for providing information security protection commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems, as described in the Federal Information Security Modernization Act (FISMA) of 2014 (PL 113-283, 44 USC 3554)¹. Additionally, agency heads are responsible for reporting on the adequacy and effectiveness of the information security policies, procedures, and practices of their enterprise. FISMA requires Federal agencies to improve the security of Information Technology (IT) systems, applications, and databases. Each Federal agency must develop, document, and implement a program to provide security for the data and IT systems that support its operations and assets. The National Institute of Standards and Technology (NIST) develops IT security standards and guidelines for FISMA.

¹ The Federal Information Security Modernization Act of 2014 amends the Federal Information Security Management Act of 2002 to: (1) reestablish the oversight authority of the Director of the Office of Management and Budget (OMB) with respect to agency information security policies and practices, and (2) set forth authority for the Secretary of the Department of Homeland Security to administer the implementation of such policies and practices for information systems.


Independent Auditor's Report on Compliance with Laws and Regulations
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The NLRB security controls were not effectively monitored or adequately documented, and system assessments and authorizations were not performed in accordance with Federal standards. The NLRB did not have adequate policies and procedures to ensure information system security due to the lack of management oversight over the security management program. The NLRB relied on outdated policies, to include policies dating back to 2003 that did not incorporate the most current NIST requirements. While the NLRB had begun to create some policies and procedures that conform to NIST Special Publication (SP) 800-53 Revision 4, they were still either in draft format or have not been started at all.

NIST SP 800-53, Revision 4 also requires that an organization develop and test a Contingency Plan annually. However, the NLRB did not have an overall Contingency Plan nor an Information System Contingency Plan and without a plan in place, no testing has been performed. The NLRB did not develop, approve, and disseminate Contingency Planning policies and procedures that provided guidance in the development and testing of a Contingency Plan.

Providing an opinion on compliance with certain provisions of laws and regulations and government-wide policies was not an objective of our audit, and accordingly, we do not express such an opinion.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.



November 6, 2017
Alexandria, VA

NLRB RESPONSE TO AUDIT REPORT



UNITED STATES NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE CHIEF FINANCIAL OFFICER

November 3, 2017

TO: David P. Berry, Inspector General

FROM: Mehul Parekh, Chief Financial Officer

SUBJECT: Response to the Audit of the National Labor Relations Board Fiscal Year 2017 Financial Statements

This letter is in response to the audit reports addressing the National Labor Relations Board (NLRB or Agency) Fiscal Year (FY) 2017 Financial Statements. The Agency has reviewed these reports including their findings and recommendations, and appreciates the opportunity to provide this response.

The auditor's opinion and determination confirmed that our financial statements represent fairly, in all material respects, the financial position of the NLRB as of September 30, 2017. We are pleased to see that the audit reflects the results that the Agency has achieved in meeting the goals set for FY 2017. The Office of the Chief Financial Officer continues to make progress in documenting its processes and procedures.

We have also reviewed your findings related primarily to computer system security procedures. As further discussed below, the Agency is committed to resolving in a diligent and effective manner the audit report's findings in this area, including issues relating to information technology policies and procedures, a FY 2017 security assessment, contractor oversight, security awareness training, contingency planning and testing for mission functions. In the Agency's view, these issues do not rise to the level of a material weakness although the Agency recognizes its responsibility to address all relevant concerns, and we provide the following additional information and observations.

The audit reports acknowledge that the Agency has a variety of sound practices in place regarding information technology policies and procedures, and the audit reports find that the Agency is updating these policies and procedures. In particular, the Agency had adopted an open Plan of Action and Milestones (POAM) for the purpose of updating NIST SP 800-53, Revision 4 control families. However, implementation of this Plan remains incomplete because of budgetary constraints, resource limitations, and competing priorities, especially those associated with the ongoing operation and maintenance of the Agency's information systems. We expect that significant steps towards completing the implementation of this POAM will occur in the current fiscal year, including effective documentation regarding relevant approvals and implementation.

With regard to the FY 2017 security assessment described in the audit report, the Office of the Chief Information Officer (OCIO) had adopted an open POAM to update control PM-1,



UNITED STATES NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE CHIEF FINANCIAL OFFICER

APPM IT-1 Computer Security Program Information Systems Security Policy (Infosysec), and security personnel in the OCIO were aware of this Plan, and there remain further efforts to address these issues based on staff and organizational restructuring and synchronizing a policy update with DHS's Continuous Diagnostics and Mitigation program. The Agency agrees with the recommendation to obtain an independent assessor to perform tests of effectiveness according to NIST SP 800-53A, and the Agency will ensure there is no conflict of interest associated with the procurement of such services.

With regard to contractor oversight and security awareness training, there is no guidance from NIST that training for contractors be tracked independently of any other type of user; and all system users are subject to our security awareness training program because the program is tied to the possession of a network account. For every new employee/contractor, the Associate CIO for Information Assurance and the Information Assurance analyst (not administrative offices) are responsible for initiating and documenting Cybersecurity Awareness training and annual refresher training. In subsequent audits, the Agency will ensure that the auditors receive relevant documentation regarding these types of training for all system users. The Agency continually assesses the performance of our personnel in all areas, and agrees with the recommendation that the Agency engage in an assessment within the OCIO, particularly as it relates to those individuals responsible for IT security functions.

As to contingency planning and testing, the Agency believes it is important to recognize that prior financial statement audits have found that the Agency's disaster recovery planning and exercise were sufficient. However, the Agency agrees it would be an improvement to formulate an overall contingency plan addressing all NLRB systems (including the Agency's financial, payroll, backpay and LAN/WAN systems), including regular testing and review of results. Thus, the Agency recently completed the development of such an overall contingency plan.

The Agency appreciates the significant work associated with these audits and the Agency remains committed to the continued refinement and improvement of processes, procedures, and policies to address the auditor's recommendations.

A handwritten signature in dark ink, appearing to read "Mehul Parekh".

Mehul Parekh, Chief Financial Officer

PRINCIPAL FINANCIAL STATEMENTS

AUDITOR'S REPORTS AND PRINCIPAL FINANCIAL STATEMENTS

National Labor Relations Board Balance Sheets As of September 30, 2017 and 2016 (in dollars)

	FY 2017	FY 2016
Assets		
Intragovernmental:		
Fund Balance with Treasury	\$ 32,131,938	\$ 33,481,817
Advances and Prepayments	44,142	54,966
Total Intragovernmental Assets	32,176,080	33,536,783
Assets with the Public		
Accounts and Interest Receivable (Note 5)	561,270	580,644
Advances and Prepayments (Note 4)	26,993	39,704
General Property, Plant, and Equipment (Note 6)	8,001,009	10,599,628
Total Assets	\$ 40,765,352	\$ 44,756,759
Liabilities		
Intragovernmental:		
Accounts Payable	\$ 968,370	\$ 3,137,289
Employer Contributions & Payroll Taxes Payable	4,996,992	4,981,491
FECA Liabilities	280,211	360,287
Total Intragovernmental	6,245,573	8,479,067
Liabilities with the Public		
Accounts Payable	4,281,224	3,558,843
Fed Employee Benefits - FECA Actuarial Liability	665,017	1,023,443
Unfunded Annual Leave	13,709,025	14,373,772
Employer Contributions and Payroll Taxes Payable	3,045,088	3,288,248
Total Liabilities	27,945,927	30,723,373
Net Position:		
Unexpended Appropriations	19,008,616	18,677,832
Cumulative Results of Operations	(6,189,191)	(4,644,446)
Total Net Position	12,819,425	14,033,386
Total Liabilities and Net Position	\$ 40,765,352	\$ 44,756,759

The accompanying notes are an integral part of these financial statements.

National Labor Relations Board
Statements of Net Cost
For the Years Ended September 30, 2017 and 2016
(in dollars)

	FY 2017	FY 2016
Program Costs:		
Resolve Unfair Labor Practices		
Net Cost	\$ 258,803,391	\$ 261,267,855
Resolve Representation Cases		
Net Cost	31,627,976	31,076,170
Total:		
Costs	290,431,367	292,344,025
Net Cost of Operations	\$ 290,431,367	\$ 292,344,025

The accompanying notes are an integral part of these financial statements.

National Labor Relations Board
Statements of Changes in Net Position
For the Years Ended September 30, 2017 and 2016
(in dollars)

	FY 2017	FY 2016
Cumulative Results of Operations:		
Beginning Balances	\$ (4,644,446)	\$ (5,175,108)
Adjustments:		
Correction of Errors	0	598,849
Beginning Balance, as Adjusted	(4,644,446)	(4,576,259)
Budgetary Financing Sources:		
Appropriations Used	272,517,753	272,495,326
Non-Exchange Revenue	0	(52,838)
Transfers In/Out without Reimbursement	0	(438,099)
Other Financing Sources (Non-Exchange):		
Imputed Financing	16,368,869	20,271,449
Total Financing Sources	288,886,622	292,275,838
Net Cost of Operations	(290,431,367)	(292,344,025)
Net Change	(1,544,745)	(68,187)
Cumulative Results of Operations	(6,189,191)	(4,644,446)
Unexpended Appropriations		
Beginning Balance	18,677,832	19,552,843
Adjustments:		
Correction of Errors	0	(601,471)
Beginning Balance, as Adjusted	18,677,832	18,951,372
Budgetary Financing Resources:		
Appropriations Received	274,224,000	274,224,000
Appropriations Used	(272,517,753)	(272,495,326)
Other Adjustments	(1,375,463)	(2,002,214)
Total Budgetary Financing Sources	330,784	(273,540)
Total Unexpended Appropriations	19,008,616	18,677,832
Net Position	\$ 12,819,425	\$ 14,033,386

The accompanying notes are an integral part of these financial statements.

**National Labor Relations Board
Statements of Budgetary Resources
For the Years Ended September 30, 2017 and 2016
(in dollars)**

	FY 2017	FY 2016
Budgetary Resources:		
Unobligated Balance, Brought Forward, Oct 1:	\$ 5,822,433	\$ 4,861,067
Recoveries of Prior Year Unpaid Obligations	5,344,164	3,705,771
Other Changes in Unobligated Balance	(1,286,684)	(1,823,942)
Unobligated balance from Prior Year Budget Authority, Net	9,879,913	6,742,896
Appropriations	274,224,000	274,224,000
Total Budgetary Resources (Note 14)	\$ 284,103,913	\$ 280,966,896
Status of Budgetary Resources:		
New Obligations and Upward Adjustments	\$ 277,450,230	\$ 275,144,463
Unobligated Balance, End of Year:		
Apportioned	916,478	602,325
Unapportioned	5,737,205	5,220,108
Total Unobligated Balance, End of Year	6,653,683	5,822,433
Total Budgetary Resources	\$ 284,103,913	\$ 280,966,896
Change in Obligated Balance		
Unpaid Obligations:		
Unpaid Obligations, Brought Forward, Oct 1 (Gross)	\$ 27,658,841	\$ 27,746,693
New Obligations and Upward Adjustments	277,450,230	275,144,463
Outlays (Gross)	(274,287,194)	(271,526,544)
Recoveries of Prior Year Unpaid Obligations	(5,344,164)	(3,705,771)
Unpaid Obligations, End of Year (Gross)	25,477,713	27,658,841
Memorandum (Non-add) Entries:		
Obligated Balance, Start of Year (Net)	\$ 27,658,841	\$ 27,746,693
Obligated Balance, End of Year (Net)	\$ 25,477,713	\$ 27,658,841
Budget Authority and Outlays, Net		
Budget Authority, Gross	\$ 274,224,000	\$ 274,224,000
Actual Offsetting Collections	(88,779)	(178,272)
Budget Authority, Net	\$ 274,135,221	\$ 274,045,728
Outlays, Gross	274,287,194	271,526,544
Actual Offsetting Collections	(88,779)	(178,272)
Outlays, Net	274,198,415	271,348,272
Agency Outlays, Net	\$ 274,198,415	\$ 271,348,272

The accompanying notes are an integral part of these financial statements.

NOTES TO PRINCIPAL STATEMENTS

Note 1. Summary of Significant Accounting Policies

A. Reporting Entity

The National Labor Relations Board (NLRB) is an independent federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. The NLRB's jurisdiction includes the U.S. Postal Service; but other government entities, railroads, and airlines are not within the NLRB's jurisdiction. The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. The NLRB does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices (ULP), by either employers, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes ULP charges before Administrative Law Judges (ALJ), whose decisions may be appealed to the Board; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the records of the NLRB in accordance with generally accepted accounting principles (GAAP), and the form and content requirements of the Office of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements, revised as of August 15, 2017*. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the Federal government. These financial statements present proprietary and budgetary information.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the agency's net position. Agency assets include both entity assets – those which are available for use by the agency – and non-entity assets – those which are managed by the agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded). A note disclosure is required to provide information about its fiduciary activities.

The Statement of Net Cost presents the gross costs of programs, reported by program and for the Agency as a whole.

The Statement of Changes in Net Position reports beginning balances, budgetary and other financing sources, and net cost of operations, to arrive at ending balances.

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, dated August 1, 2017.

The Agency is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of Certified Public Accountants (AICPA) as the entity to establish GAAP for the Federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting standards, and (3) the United States Standard General Ledger (USSGL) at the transaction level. Since the Agency is not a CFO Act agency, it is not subject to FFMIA. The Agency uses the Department of Interior's financial management system and that system is FFMIA compliant. Thus, the Agency's financial management system complied with the requirements of FFMIA and produced records in accordance with USSGL at the transaction level.

The financial statements should be read with the realization that they are for a component of the United States Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without legislation that provides resources and legal authority to do so.

The accounting structure of federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual

method of accounting, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to the occurrence of an accrual based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of federal funds.

The information as presented on the Statement of Net Cost is based on the programs below:

ULP Cases are initiated by individuals or organizations through the filing of a charge with the NLRB. If the NLRB Regional Office believes that a charge has merit, it issues and prosecutes a complaint against the charged party, unless settlement is reached. A complaint that is not settled or withdrawn is tried before an ALJ, who issues a decision, which may be appealed by any party to the Board. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the law and the body of case law that has been developed by the Board and the federal courts.

Representation Cases are initiated by the filing of a petition by an employee, a group of employees, an individual or labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents, or in some cases continues to represent, a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency is to investigate the petition and,

if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the NLRA.

All cases are assigned unique tracking numbers, with the letter “C” designating Unfair Labor Practices cases, and the letter “R” designating Representation cases. The percentage of new cases filed for each type of case drives the program breakout for financial reporting purposes. Please see chart below with the calculations for FY 2017 and FY 2016, through September 30.

	FY 2017	FY 2016
	Percentage	Percentage
C Cases (Unfair Labor Practices)	89%	89%
R Cases (Representation)	11%	11%
	100%	100%

C. Budgets and Budgetary Accounting

Congress annually adopts a budget appropriation that provides the NLRB with authority to use funds from the Department of the Treasury (Treasury) to meet operating expense requirements. The NLRB has single year budgetary authority and all unobligated amounts at year-end expire. At the end of the fifth year following the year of execution, all amounts not expended are canceled and returned to Treasury. Additionally, all revenue received from other sources must be returned to the Treasury.

Budgetary accounting measures appropriation and consumption of budget/spending authority and facilitates compliance with legal constraints and controls over the use of federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time an obligation to pay is made. Only those liabilities for which

valid obligations have been established are considered to consume budgetary resources.

D. Financing Sources

The NLRB receives funds to support its programs through annual appropriations. These funds may be used to pay program and administrative expenses, primarily salaries and benefits, space occupancy, travel, and contractual service costs.

For accounting purposes, appropriations are recognized as financing sources, and as appropriations used at the time expenses are accrued. Appropriations expended for general property, plant and equipment are recognized as expenses when the asset is consumed in operations (depreciation and amortization).

E. Fund Balance with the Treasury

The NLRB does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by Treasury, and the agency’s records are reconciled with those of Treasury. Funds with Treasury represent the NLRB’s right to draw on the Treasury for allowable expenditures.

In addition, funds held with Treasury also include escrow funds that are not appropriated but are fiduciary in nature. The fiduciary funds are not recognized on the Balance Sheet.

F. Fiduciary Activities

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and investment, and disposition by the Federal government of cash or other assets in which non-Federal individuals or entities have an ownership interest that the Federal government must uphold. Fiduciary cash and other assets are not assets of the Federal government, and are therefore not recognized on the proprietary financial statements, but are reported on schedules in the notes to the financial

statements. See Statement of Federal Financial Accounting Standards (SFFAS) No. 31, Accounting for Fiduciary Activities.

The fiduciary funds collected by NLRB and held in escrow represent funds that were collected as part of the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB collects the funds, and then distributes them to employees, unions, pension funds, or other discriminatees in the settlement. The NLRB has the option to invest funds in Federal government securities, if the funds will remain in escrow for a lengthy period of time. During FY 2017, no fiduciary funds were invested.

There exists a signed Memorandum of Understanding (MOU) between the NLRB and the Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the fiduciary fund account in Treasury.

G. Accounts Receivable, Net of Allowance for Doubtful Accounts

Accounts Receivable typically consists of two types of debts: payroll-related debts due to the NLRB from Agency employees and debts due to the NLRB from third party sources for invitational travel. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year-end.

H. General Property, Plant and Equipment

General property, plant and equipment consist primarily of telephone systems, bulk purchases, computer hardware and software, and leasehold improvements.

Personal Property. Personal property costing \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Bulk purchases of large quantities of property that would otherwise fall under the individual capitalization threshold are capitalized if the total purchase is \$100,000 or more. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The useful life for this category is three to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

Real Property. Real property consists of leasehold improvements on GSA leased space which cost \$100,000 or more. Leasehold improvements are recorded as construction in progress until the Agency has beneficial occupancy of the space, and then the costs are moved to the Leasehold Improvements account for amortization over the remaining life of the lease.

Internal Use Software. Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the development cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The standard useful life for IUS has been established as three years, in order to most accurately

match expenses with the time period in which the benefits are received from the software. The NLRB uses the straight-line method of amortization.

Primary IUS additions in FY 2017 and FY 2016 were for the Next Generation Case Management System (NXGen). The NXGen project was a multiple year undertaking in which a large portion of the system was rolled out in FY 2011. IUS additionally supports systems such as e-Gov, E-filing, and provides the public with web-based access to NLRB data.

Internal Use Software in Development. Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account and amortized accordingly, as described above.

I. Non-Entity Assets

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets. Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act (FOIA) requests that must be transferred to the Treasury at the end of each fiscal year.

J. Liabilities

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. However, no liability can be paid by the NLRB absent an appropriation. Liabilities of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

K. Liabilities Not Covered by Budgetary Resources

Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity.

Intragovernmental

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or paid by the NLRB as of September 30, 2017 and 2016, respectively.

Federal Employees Workers' Compensation Program

The Federal Employees Compensation Program (FECA) provides income and medical cost protection to covered federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by DOL, which pays valid claims and subsequently seeks reimbursement from the NLRB for these paid claims.

The FECA liability consists of two components. The first component is based on actual claims paid by DOL but not yet reimbursed by the NLRB. The NLRB reimburses DOL for the amount of the actual claims as funds are appropriated for this purpose. There is generally a two- to three-year time period between payment by DOL and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the

actual claims paid by DOL and to be reimbursed by the NLRB.

The second component is the estimated liability for future benefit payments as a result of past events. This liability includes death, disability, medical, and miscellaneous costs. The NLRB determines this component annually, as of September 30, using a method that considers historical benefit payment patterns.

Due to the small number of claimants, the NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 84.3 and 86.6 years for male and female, respectively.

Accrued Annual Leave

Accrued annual leave represents the amount of annual leave earned by NLRB employees but not yet taken.

L. Contingencies

The criteria for recognizing contingencies for claims are:

1. a past event or exchange transaction has occurred as of the date of the statements;
2. a future outflow or other sacrifice of resources is probable; and
3. the future outflow or sacrifice of resources is measurable (reasonably estimated).

The NLRB recognizes material contingent liabilities in the form of claims, legal action, administrative proceedings and suits that have been brought to the attention of legal counsel, some of which will be paid by the Treasury Judgment Fund. It is the opinion of management and legal counsel that the ultimate resolution of these proceedings, actions and claims, will not

materially affect the financial position or results of operations.

Contingencies are recorded when losses are probable, and the cost is measurable. When an estimate of contingent losses includes a range of possible costs, the most likely cost is reported; where no cost is more likely than any other, the lowest possible cost in the range is reported. This item will normally be paid from appropriated funds.

M. Unexpended Appropriations

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

N. Annual, Sick, and Other Leave *Annual and Sick Leave Program.*

Annual leave is accrued as it is earned by employees and is included in personnel compensation and benefit costs. Each year, the balance in the accrued annual leave liability account is adjusted to reflect current pay rates. Annual leave earned but not taken, within established limits, is funded from future financing sources. Sick leave and other types of non-vested leave are expensed as taken.

O. Life Insurance and Retirement Plans *Federal Employees Group Life Insurance (FEGLI) Program.*

Most NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain "basic life" term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met.

The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

Retirement Programs.

The NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most of the NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to 7 percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this

system and to match voluntary employee contributions up to 3 percent of the employee's basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. The maximum amount of base pay that an employee participating in FERS may contribute is \$18,000 in calendar year (CY) 2017 to this plan. Employees belonging to CSRS may also contribute up to \$18,000 of their salary in CY 2017 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2017 is \$6,000. For CY 2017, the regular and catch-up contributions may not exceed \$24,000. The sum of the employees' and the NLRB's contributions are transferred to the Federal Retirement Thrift Investment Board. For FERS employees, the Agency also contributes the employer's share of Medicare.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employees government-wide, including the NLRB employees. The NLRB has recognized an imputed cost and imputed financing source for the difference between the estimated service cost and the contributions made by the NLRB and covered CSRS employees.

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with SFFAS No.4, Managerial Cost Accounting Concepts and Standards for the Federal Government, included in the

NLRB's financial statements as an imputed financing source.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits (FEHB) and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS No. 4, Managerial Cost Accounting Concepts and Standards for the Federal government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future, and provide these factors to the agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

As of year ended September 30, 2017, the NLRB, utilizing OPM provided cost factors, recognized \$5,426,278 of pension expenses, \$10,916,004 of post-retirement health benefits expenses, and \$26,587 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$16,368,869 as an imputed financing source to the extent that these Intragovernmental expenses will be paid by OPM. In comparison, in FY 2016, the NLRB recognized \$7,008,181 of pension expenses, \$13,235,881 of post-retirement health benefits expenses, and \$27,387 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$20,271,449 as an imputed financing source from OPM.

P. Operating Leases

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the General Services Administration (GSA) and commercial copier leases. NLRB leases all buildings through GSA. The NLRB pays GSA a standard level users charge for the annual leases, which approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, and it does not record GSA-owned properties as assets. The real property leases are for NLRB's Headquarters and Regional Offices, and the personal property leases are for Fleet vehicles and copiers.

Q. Net Position

Net position is the residual difference between assets and liabilities and is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations are the net result of the NLRB's operations.

R. Use of Management Estimates

The preparation of the accompanying financial statements in accordance with GAAP requires management to make certain estimates and assumptions that directly affect the results of reported assets, liabilities, revenues, and expenses. Actual results could differ from these estimates.

S. Tax Status

The NLRB, as an independent Board of the Executive Branch is a federal agency, and is not subject to federal, state, or local income taxes, and accordingly, no provision for income tax is recorded.

T. Subsequent Events

Subsequent events and transactions occurring after September 30, 2017 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditors' opinion also represents the date that the financial statements were available to be issued.

Note 2. Fund Balance with Treasury

Treasury performs cash management activities for all federal agencies. NLRB's Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2017 and September 30, 2016 consists of the following:

(in whole dollars)	FY 2017	FY 2016
Entity Fund Balance with Treasury	\$ 32,131,938	\$ 33,481,817
Non-Entity Fund Balance with Treasury	0	52,838
Total	\$ 32,131,938	\$ 33,534,655

Fund Balance with Treasury by Fund Type:

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years, which are not available to fund new obligations.

The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

Obligated and unobligated balances reported for the status of Fund Balance with Treasury do not agree with obligated and unobligated balances reported on the Statement of Budgetary Resources because the Fund Balance with Treasury includes items for which budgetary resources are not recorded, such as deposit funds and miscellaneous receipts (non-entity).

Status of Fund Balance with Treasury as of September 30, 2017 and September 30, 2016 consists of the following:

Fund Balance with Treasury by Availability:

(in whole dollars)	FY 2017	FY 2016
Unobligated Balance		
Available	\$ 916,478	\$ 602,325
Unavailable	5,737,205	5,220,108
Obligated balance not yet disbursed	25,478,255	27,659,384
Non-budgetary fund balance with Treasury	0	52,838
Total	\$ 32,131,938	\$ 33,534,655

Note 3. Fiduciary Activities

Backpay funds are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. NLRB holds these funds in an escrow account with Treasury and may invest the funds in market-based Treasury securities issued by the Federal Investment Branch of the Bureau of the Fiscal Service.

Schedule of Fiduciary Activity
As of September 30, 2017 and 2016

(in whole dollars)	FY 2017	FY 2016
Fiduciary net assets, beginning of the year	\$ 2,071,873	\$ 4,542,870
Fiduciary revenues	2,505,326	10,115,627
Investment earnings	0	0
Disbursements to and on the behalf of beneficiaries	(2,060,920)	(12,586,624)
Increase (Decrease) in fiduciary net assets	\$444,406	\$ (2,470,997)
Fiduciary net assets, end of year	\$ 2,516,279	\$ 2,071,873

Note 4. Advances
Intragovernmental

Intragovernmental Advances were paid to the Department of Transportation for the employee transit subsidy program.

Non-Federal

Non-Federal Advances were paid for postage meter funding.

Note 5. Accounts Receivable, Net of Allowances for Doubtful Accounts

The FY 2017 intragovernmental accounts receivable is zero and the FY 2016 amount was zero.

(in whole dollars)	FY 2017	FY 2016
With the public		
Accounts receivable	\$ 640,865	\$ 616,016
Allowance doubtful accounts	(79,595)	(35,372)
Accounts receivable, net	\$ 561,270	\$ 580,644

Note 6. General Property, Plant and Equipment

General property, plant, and equipment consists of that property which is used in operations and consumed over time. The table below summarizes the cost and accumulated depreciation for general property, plant and equipment.

FY 2017 (in whole dollars)	Asset Cost	Accumulated Depreciation / Amortization	Net Asset Value
Equipment	\$ 3,165,758	\$ 2,757,255	\$ 408,503
Construction in Progress	122,378	0	122,378
Leasehold Improvements	5,705,106	1,238,917	4,466,189
Internal Use Software (IUS)	35,493,985	32,490,046	3,003,939
IUS in Development	0	0	0
Totals	\$ 44,487,227	\$ 36,486,218	\$ 8,001,009
FY 2016 (in whole dollars)	Asset Cost	Accumulated Depreciation / Amortization	Net Asset Value
Equipment	\$ 3,165,758	\$ 2,184,791	\$ 980,967
Construction in Progress	115,164	0	115,164
Leasehold Improvements	5,551,554	676,084	4,875,470
Internal Use Software (IUS)	34,094,533	29,493,399	4,601,134
IUS in Development	26,893	0	26,893
Totals	\$ 42,953,902	\$ 32,354,274	\$ 10,599,628

Note 7. Liabilities Not Covered by Budgetary Resources

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of liabilities not covered by budgetary resources as of September 30, 2017 and September 30, 2016, is as follows:

(in whole dollars) Intragovernmental	FY 2017	FY 2016
FECA-Unfunded	\$ 280,211	\$ 360,287
Total Intragovernmental	280,211	360,287
Estimated Future FECA	665,017	1,023,443
Accrued Annual Leave	13,709,025	14,373,772
Total Liabilities not covered by budgetary resources	14,654,253	15,757,502
Total Liabilities covered by budgetary resources	13,291,674	14,965,871
Total Liabilities	\$ 27,945,927	\$ 30,723,373

Note 8. Non-Entity Assets

Non-Entity assets represent miscellaneous receipts collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of non-entity assets as of September 30, 2017 and September 30, 2016, is as follows:

(in whole dollars)	FY 2017	FY 2016
Non-Entity Assets		
Fund Balance with Treasury	\$ 0	\$ 52,838
Accounts Receivable	0	0
Entity assets	40,765,352	44,756,759
Total Assets	\$ 40,765,352	\$ 44,809,597

Additionally, NLRB received a remainder interest in Florida real estate valued at approximately \$46,000 as part of a ULP case settlement. This asset is not included in the table above.

Note 9. Cumulative Results of Operations

(in whole dollars)	FY 2017	FY 2016
FECA paid by DOL	\$ (93,319)	\$ (139,608)
FECA – Unfunded	(280,211)	(360,287)
Estimated Future FECA	(665,017)	(1,023,443)
Accrued Annual Leave	(13,709,025)	(14,373,772)
General Property, Plant & Equipment, Net	8,001,009	10,599,628
Other	557,372	653,036
Cumulative Results of Operations	\$ (6,189,191)	\$ (4,644,446)

Note 10. Intragovernmental Costs and Exchange Revenue

For the intragovernmental costs, the buyer and seller are both federal entities. The earned revenue is the reimbursable costs from other federal entities. The NLRB has the authority to provide administrative law judges' services to other federal entities. There is no exchange revenue with the public.

(in whole dollars)	FY 2017	FY 2016
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$56,355,119	\$63,752,796
Costs with the Public	202,448,272	197,515,059
Total Net Cost – Resolve Unfair Labor Practices	\$258,803,391	\$261,267,855
Resolve Representation Cases		
Intragovernmental Costs	\$6,887,075	\$7,582,995
Costs with the Public	24,740,901	23,493,175
Total Net Cost – Resolve Representation Cases	\$31,627,976	\$31,076,170
Net Cost of Operations	\$290,431,367	\$292,344,025

Note 11. Operating Leases

GSA Real Property. NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or rented by GSA from the private sector. The NLRB has OAs with GSA, which sets forth terms and conditions for the space the Agency

will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally-owned leases are included in years FY 2018 through FY 2023.

Rental expenses for operating leases for the year ended September 30, 2017 were \$22,495,903 for Agency lease space and \$2,510,967 for Agency building security. For FY 2016 the operating lease costs were \$17,647,789 and the Agency building security portion was \$2,872,233.

Future Space Lease Payments

(in whole dollars) Fiscal Year	GSA Real Property Cost
2018	22,744,689
2019	24,728,509
2020	25,332,637
2021	25,839,290
2022	26,356,076

Future Fleet Lease Payments

The future fleet payments reflect the expense for 31 vehicles used for official NLRB business throughout the United States. Expenses for the fleet vehicles for the year ended September 30, 2017 were \$121,711; for FY 2016 the costs were \$117,910.

(in whole dollars) Fiscal Year	GSA Fleet Cost
2018	100,000
2019	103,000
2020	106,090
2021	109,273
2022	112,551

Future Copier Lease Payments

The commercial copier rental expense reflects lease contracts for copy machines located at the NLRB Headquarters and Field Offices. For FY 2017 the commercial copier yearly contract is \$438,534; for FY 2016 the cost was \$451,940.

(in whole dollars) Fiscal Year	Copier Lease Cost
2018	453,838
2019	467,453
2020	481,477
2021	495,921
2022	510,799

Note 12. Imputed Financing Costs

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2017 and 2016 consisted of:

(in whole dollars)	FY 2017	FY 2016
Office of Personnel Management:		
Pension expenses	\$ 5,426,278	\$ 7,008,181
Federal employees health benefits	10,916,004	13,235,881
Federal employees group life insurance program	26,587	27,387
Total Imputed Financing	\$ 16,368,869	\$ 20,271,449

Note 13. Appropriations Received

The NLRB received \$274,224,000 in warrants for both fiscal years ended September 30, 2017 and 2016.

Note 14. Statement of Budgetary Resources

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the Federal government. The total Budgetary Resources of \$284,103,913 as of September 30, 2017 and \$280,966,896 as of September 30, 2016, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. The amount of budgetary

resources obligated for unpaid delivered and undelivered orders was \$25,477,713 for FY 2017 and \$27,658,841 for FY 2016. The NLRB's apportioned unobligated balance available at September 30, 2017 was \$916,478 and at September 30, 2016 was \$602,325.

Apportionment Categories of New Obligations and Upward Adjustments.

NLRB's new obligations and upward adjustments as of September 30, 2017 and September 30, 2016 by apportionment Category A and B are shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories. OMB does not require the Agency to separate its funding and therefore all obligations incurred were from one funding category.

(in whole dollars)	FY 2017	FY 2016
New Obligations and Upward Adjustments:		
Direct	\$ 277,450,230	\$ 275,144,463
Reimbursable	0	0
Total New Obligations and Upward Adjustments	\$ 277,450,230	\$ 275,144,463

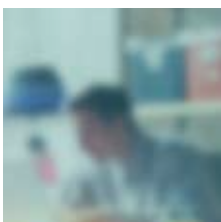
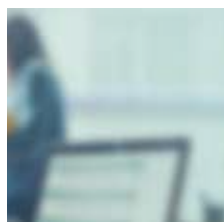
Note 15. Reconciliation of Net Cost of Operations to Budget

For the Month Ended September 30, 2017 and 2016		
(in whole dollars)	FY 2017	FY 2016
Resources Used to Finance Activities		
Current Year Gross Obligations	\$ 277,450,230	\$ 275,144,463
Budgetary Resources from Offsetting Collections		
Spending Authority from Offsetting Collections		
Earned		
Collected	(88,779)	(178,272)
Recoveries of Prior Year Unpaid Obligations	(5,344,164)	(3,705,771)
Other Financing Resources		
Imputed Financing Sources	16,368,869	20,271,449
Total Resources Used to Finance Activity	\$ 288,386,156	\$ 291,531,869
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Budgetary Obligations and Resources not in the Net Cost of Operations		
Change in Undelivered Orders	(1,307,427)	(2,288,343)
Current Year Capitalized Purchases	(165,806)	(694,317)
Components of the Net Cost of Operations which do not Generate or Use Resources in the Reporting Period		
Revenues without Current Year Budgetary Effect		
Other Financing Sources Not in the Budget	(16,368,869)	(20,271,449)
Costs without Current Year Budgetary Effect		
Depreciation and Amortization	4,144,382	4,038,919
Disposition of Assets	99,511	0
Future Funded Expenses	(744,823)	270,105
Imputed costs	16,368,869	20,271,449
Bad Debt Expense	44,223	8,970
Other Expenses Not Requiring Budgetary Resources	(24,849)	(523,178)
Net Cost of Operations	\$ 290,431,367	\$ 292,344,025



OTHER INFORMATION

**PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935**



INSPECTOR GENERAL'S TOP PERFORMANCE & MANAGEMENT CHALLENGES

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 5, 2017

To: Board and General Counsel

From: David Berry
Inspector General

A handwritten signature in dark ink, appearing to read "D. Berry", is written over the printed name of David Berry.

Subject: Top Management and Performance Challenges

As part of the Performance and Accountability Report, the Office of Inspector General is required by section 3516 of title 31 to summarize what the Inspector General considers to be the most serious management and performance challenges facing the Agency and briefly assess its progress in addressing those challenges. This memorandum fulfills that requirement. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge of the National Labor Relations Board's (NLRB or Agency) operations.

For the purpose of this report, an item can be noted as a management or performance challenge even though it is not a deficiency or within the control of the Agency. In our prior year's memorandum, we identified five management and performance challenges.

CHALLENGES

Manage the Agency

In prior reports, I categorized the challenges into specific items and provided a brief explanation of the specific issues. Although this reporting method meets the statutory requirement, last year I decided that method was not capturing an overarching challenge that this Agency faces.

Because of the technical expertise required to administer the enforcement of the National Labor Relations Act (NLRA), the NLRB tends to promote its employees to management rather than recruiting seasoned managers from outside. As a result, the NLRB's management team is dominated by attorneys and examiners. Those individuals are generally smart and well-intentioned public servants who time and again demonstrate a true commitment to enforcing the NLRA, but they are not always effective managers or leaders. There are exceptions to this tendency, but they are rare and generally follow an effort at restructuring, such as when the Office of the Chief Financial Officer (OCFO) was created, or in the hiring in administrative areas such as Human Resources.

Our audit reports and investigative activity over the last several years draw into focus a significant management challenge. In order for the Board or General Counsel, the NLRB's governance structure, to ensure that the Agency is properly managed, there must be sufficient internal controls and processes to ensure that the controls are implemented and that they are operating as intended. Our audits and investigations continue to have findings of instances of failures in the internal control processes at the NLRB that result from either the lack of a control, disregard for the implementation of established controls, or the failure to properly supervise employees. This lack of effective management puts at risk the NLRB's ability to meet its basic mission.

Manage the Agency's Financial Resources

Both the FY 2010 and FY 2011 audits of the financial statements contained a finding by the independent auditing firm that there was a significant deficiency in internal control. Although the findings were largely related to problems in the procurement process, our audit of end-of-the-year spending demonstrated that there was a lack of sound budgeting and planning processes that are essential to proper fiscal management.

In July 2012, the Board created the OCFO, implementing the final recommendation of the FY 2010 audit of the financial statements. That office now oversees the budget, procurement, and payment processes.

The creation of the OCFO was not a quick fix. The *Audit of the NLRB Fiscal Year 2014 Financial Statements* found both a material weakness and two matters that were each a significant deficiency in internal control. The *Audit of the NLRB Fiscal Year 2015 Financial Statements* found that the matter identified as a material weakness was not fully remediated and continued as a significant deficiency, but the other two matters were remediated. The *Audit of the NLRB Fiscal Year 2016 Financial Statements* found that the matter first identified in FY 2014 as a material weakness continued as a significant deficiency through FY 2016, and added a new matter as a significant deficiency.

We are aware that the OCFO took steps during FY 2017 to restructure the staff and address issues related to the sound management of the NLRB's financial resources. We have also observed that the Chief Financial Officer is fully engaged in addressing the issues of the prior audits and improving the OCFO's processes. We do, however, remain concerned that the OCFO is not properly staffed to ensure the effective management of the NLRB's financial processes.

Manage the NLRB's Human Capital and Maintain the Agency's Institutional Knowledge

These two challenges are interrelated. The need to maintain a stable and productive workforce is key to the NLRB's ability to fulfill its statutory mission. Factors outside the NLRB's control that may directly affect its ability to maintain a stable and productive

workforce include, but are not limited to, reduced or flat appropriations and the loss of key personnel through retirements.

In our audit work we have, over an extended period of time, observed the loss of institutional knowledge in management practices as new personnel take over key positions. In some circumstances when information about historical practices is available, the context regarding why the practice was developed has been lost with personnel changes. The challenge is to recruit qualified personnel who can improve management practices while understanding the NLRB's past practices.

The hiring freeze that was imposed in the second quarter of FY 2017 and the threat of a significant reduction in the NLRB's appropriation have made the management of human capital a Herculean task. We have observed, both in the Field and at Headquarters, offices that are clearly understaffed. Employees have expressed to us that the level of stress and frustration in the workplace caused by staffing issues was a factor in their decision to leave. This situation feeds upon itself and perpetuates the human capital challenges.

Manage the Agency's Information Technology Security

Our FY 2016 submission for the annual Federal Information Security Management Act (FISMA) security review noted our observation that a significant number of information technology (IT) security procedures were not in place and that most of what the IT security staff was doing was on an ad hoc basis. Overall, the NLRB Office of the Chief Information Officer received a FISMA score of 39 out of 100. During the *Audit of the NLRB Fiscal Year 2017 Financial Statements*, the auditors confirmed our observations.

We remain concerned about the status of the NLRB's IT security. At this time, it is our assessment that the loss of one key IT security employee could result in the collapse of all of the IT security processes. The Chief Information Officer must address this challenge by creating and effectively implementing a system of internal controls that meet the Government-wide IT security requirements.

Implement Audit Recommendations

In last year's Top Management and Performance Challenges memorandum, we reported that the Agency had 33 open audit recommendations. Since that time, we added 12 and we closed 8. At this time, there are a total of 37 open recommendations. The oldest of the open recommendations is from an audit report issued in FY 2015. A recommendation is not closed until we verify that the implementing action appropriately addressed the issue that necessitated the recommendation.

SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

I. SUMMARY OF FINANCIAL STATEMENT AUDIT

Audit Opinion: Unmodified					
Restatement: No					
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
Lack of Information Technology Updated Policies and Procedures	0	1	0	0	1
Lack of Information Technology Contingency Plan and Testing	0	1	0	0	1
Total Material Weaknesses	0	2	0	0	2

II. SUMMARY OF MANAGEMENT ASSURANCES

EFFECTIVENESS OF INTERNAL CONTROL OVER OPERATIONS (FMFIA §2)

Statement of Assurance: Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

SUMMARY OF MANAGEMENT ASSURANCES (cont'd.)

COMPLIANCE WITH FINANCIAL SYSTEMS REQUIREMENTS (FMFIA §4)

Statement of Assurance: Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

IMPROPER PAYMENTS INFORMATION ACT

Pursuant to the Improper Payments Information Act (IPIA) of 2002 (Public Law No. 107-300), dated November 26, 2002, and amended on July 22, 2010 by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Public Law No. 111-204), and again in 2012 with the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (Public Law No. 112-248); Under the Office of Management and Budget's (OMB) Circular A-123; Appendix C guidance, all agencies under the executive branch of the United States are required to comply with IPERIA.

The NLRB has only one program for budget purposes. For FY 2017, \$274,339,845 in disbursements were made, of which payroll, benefits and travel accounted for \$217,180,267, and \$36,000,353 was disbursed in the form of inter-governmental and miscellaneous payments. The NLRB paid \$21,209,225 to vendors, or about 8% of the total disbursements. Based on the agency's current controls, systems and continuous monitoring efforts, the NLRB concluded in FY 2015 that the Salaries and Expenses program is at low risk for improper payments.

The NLRB is committed to minimizing the risk of improper payments and we use a variety of system controls, separation of duties, and other procedures to reduce that risk and to promptly identify any improper payments that might occur. These controls are tested as part of the SSAE 18, A-123, and financial statement audit processes; they are also considered during the annual FMFIA process.

Given these controls, we estimate the improper payments rate to be at most 1.5 percent and the improper payments amount to be no more than \$4,115,098. This level is below the threshold

established by the OMB and therefore does not represent significant improper payments. The NLRB has reasonable assurance that controls over financial and non-financial operations are sufficient. No additional reporting requirements are necessary.

DO NOT PAY (DNP) INITIATIVE

The mission of the Treasury Do Not Pay (DNP) team is to "protect the integrity of the government's payment process by assisting agencies in mitigating and eliminating improper payments in a cost-effective manner while safeguarding the privacy of individuals." The NLRB echoes that sentiment and has made eliminating improper payments one of the agency's financial management priorities. The DNP portal is a multifaceted system that embraces resources from several agency subsystems i.e. Social Security Administration's Death Master File, GSA's System for Award Management (SAM) Exclusion Records as well as Treasury's Treasury Offset Program (TOP). DNP uses this network of systems in order to disseminate to agencies whom should or should not receive public funds in order to reduce or prevent the likelihood of improper payments.

In fiscal year 2017, the DNP portal vetted 10,120 payments for authenticity and validity. The number of payments made amounted to \$23,921,424.18 in disbursements that passed through DNP's network of red flag indicating systems. As a result, DNP identified 1 payment totaling \$51.82 that required further review because of a death record match. DNP did not identify any payments which matched a vendor name on the Excluded Parties List (EPL).

October 2015 - August 2016

	Number (#) of payments reviewed for improper payments	Dollars (\$) of payments reviewed for improper payments	Number (#) of payments stopped	Dollars (\$) of payments stopped	Number (#) of improper payments reviewed and not stopped	Dollars (\$) of improper payments reviewed and not stopped
Reviews with DMF Public	10,129	\$ 23,921,424.18	N/A	N/A	1	\$ 51.82
Reviews with SAM Exclusions Public	10,120	\$ 23,921,424.18	N/A	N/A	0	\$0

- Payments reviewed for improper payments includes the total number of payments disbursed by the Agency through the PACER payment system minus any payments that were excluded from matching due to (1) a missing or unmatchable TIN (DMF only) or (2) a missing name.
- Payments stopped is currently not applicable since the Do Not Pay matching and adjudication process is based on post payment results.
- Improper payments reviewed and not stopped includes the total number of matches identified by the Do Not Pay Initiative that were adjudicated as proper by the Agency.

FREEZE THE FOOTPRINT

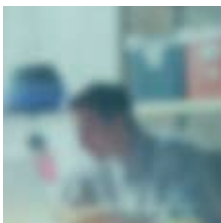
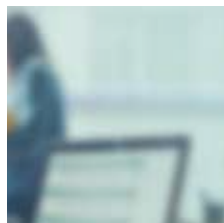
The Agency leases all buildings under occupancy agreements with the GSA, and as such does not provide square footage to the Federal Real Property Profile (FRPP).





APPENDICES

**PROTECTING DEMOCRACY IN
THE WORKPLACE SINCE 1935**



AAPI	Asian Americans and Pacific Islanders	FAA	Federal Arbitration Act
ABA	American Bar Association	FAR	Federal Acquisition Regulation
ADA	Antideficiency Act	FASAB	Federal Accounting Standards Advisory Board
ADR	Alternate Dispute Resolution	FCPIA	Federal Civil Penalties Inflation Adjustment Act
ALJ	Administrative Law Judge	FFATA	Federal Funding Accountability and Transparency Act
AMB	Acquisitions Management Branch	FISMA	Federal Information Security Management Act
AS	Administrative Systems	FMFIA	Federal Managers’ Financial Integrity Act
BMS	Backpay Management System	FPB	Facilities and Property Branch
CATS	Case Activity Tracking System	FPDS-NG	Federal Procurement Data System – Next Generation
CCSLB	Contempt, Compliance and Special Litigation Branch	FPPS	Federal Payroll and Personnel System
CEP	Cultural Enhancement Program	FRPP	Federal Real Property Profile
CFO	Chief Financial Officer	FTR	Federal Travel Regulations
CLM	Contract Lifecycle Management	FY	Fiscal Year
COOP	Continuity of Operations	GAAP	Generally Accepted Accounting Principles
COR	Contracting Officer Representative	GPO	Government Publishing Office
CPAO	Congressional and Public Affairs Office	GPRA	Government Performance and Results Act
CR	Continuing Resolution	GPRAMA	Government Performance and Results Modernization Act
CWTSato	(Carlson Wagonlit) NLRB’s travel Management Service	GSA	General Services Administration
Data Act	Digital Accountability and Transparency Act	HCPO	Human Capital Planning Officer
DCIA	Debt Collection Improvement Act	IAA	Interagency Agreement
DHS	Department of Homeland Security	IBC	Interior Business Center
DMF	Death Master File	INT	Interest Income
DNP	“Do Not Pay” List	IOC	Indicator of Compromise
DOJ	Department of Justice	IPERA	Improper Payments Elimination and Recovery Act
DOL	Department of Labor		
EEO	Equal Employment Opportunity		
EEOC	Equal Employment Opportunity Commission		

IPERIA	Improper Payments Elimination and Recovery Improvement Act	OMB	Office of Management and Budget
IPIA	Improper Payments Information Act	OPA	Office of Public Affairs
ITSM	Information Technology Services Management	OSC	Office of Special Counsel
IUS	Internal Use Software	OSHA	Occupational Safety and Health Administration
IWG	Interagency Working Group	PACER	Payments, Claims and Enhanced Reconciliation
LOA	Letters of Agreement	PAR	Performance and Accountability Report
LVER	Local Veterans Employment Representative Program	PAS	Presidential Appointees with Senate Confirmation
MD&A	Management's Discussion and Analysis	PD	Position Description
MOU	Memorandum of Understanding	PIF	Presidential Innovation Fellows
NLRA	National Labor Relations Act	QR	Quick Response
NLRB	National Labor Relations Board	SAM	System for Award Management
NxGen	Next Generation Case Management System	SBA	Small Business Administration
OA	Occupancy Agreement	SEPM	Special Emphasis Program Manager
OBIA	Oracle Business Intelligence Application	SES	Senior Executive Service
OBIEE	Oracle Business Intelligence Enterprise Edition	T&A	Time and Attendance
OCFO	Office of the Chief Financial Officer	TIC	Trusted Internet Connection
OCIO	Office of the Chief Information Officer	TIN	Taxpayer Identification Number
OED	Office of Employee Development	TOP	Treasury Offset Program
OEE0	Office of Equal Employment Opportunity	UCC	Unified Communications Contract
OFCCP	Office of Federal Contract Compliance Programs	ULP	Unfair Labor Practice
OGE	Office of Government Ethics	USPS	United States Postal Service
OHR	Office of Human Resources	VRA	Veteran's Recruitment Appointment
OIG	Office of Inspector General	WH	White House
OLMS	Office of Labor Management Standards	WHD	Wage and Hour Division
		WHIAAPI	White House Initiative on Asian Americans and Pacific Islanders

APPENDIX B

Glossary

Adjudicate: Formal judgment or decision about a disputed matter.

Adversarial: Of a trial or legal procedure in which the parties in a dispute have the responsibility for finding and presenting evidence.

Amicus Curiae: Friend of the court.

Arbitrator: An independent person or body officially appointed to settle a dispute.

Backpay: Payment for work done in the past that was withheld at the time, or for work that could have been done had the worker not been prevented from doing so.

Case: The general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case.

Certiorari: A writ or order by which a higher court reviews a decision of a lower court.

Charge: A document filed by an employee, an employer, a union, or an individual alleging that a ULP has been committed by a union or employer.

Collective Bargaining: Negotiation between organized workers and their employer or employers to determine wages, hours, rules, and working conditions.

Complaint: A document that initiates “formal” proceedings in a ULP case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of the hearing.

Compliance: The carrying out of remedial action as agreed upon by the parties in writing; as recommended by the administrative law judge in the decision; as ordered by the Board in its decision and order; or as decreed by the court.

Consented Election: A Regional Director will hold a prehearing conference to attempt to resolve bargaining unit issues and questions of voter eligibility without having to resort to a full hearing. This type of election eliminates the need for a formal hearing if all parties voluntarily reach an agreement.

Decisions: Data related to decisions by the Board and NLRB Administrative Law Judges.

Deferral: Under certain circumstances, it may be appropriate for a Regional Director to hold up making a determination on the merits of a charge pending the outcome of proceedings on related matters. Such matters may be pending in the parties’ contractual grievance procedure or before the Agency or other Federal, State or local agencies or courts.

Dismissed Cases: Cases may be dismissed at any stage. For example, following an investigation, the Regional Director may dismiss a case when he or she concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for other legitimate reasons. Before the charge is dismissed, the charging party is given the opportunity to withdraw the charge by the Regional Director. A dismissal may be appealed to the Office of the General Counsel.

Directed Election: An election which the Regional Director directs after evidence is presented at a hearing regarding the existence of questions concerning representation and the appropriateness of the bargaining unit sought by the petitioning party.

Expungement: When a first time offender of a prior criminal conviction seeks that the records of that earlier process be sealed, making the records unavailable through the state or Federal repositories.

Formal Action: Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are those in which the Board exercises its decision-making authority in order to dispose of a case or issues raised in a case. “Formal action” also describes a Board decision and consent order issued pursuant to a stipulation, even though a stipulation constitutes a voluntary agreement.

Gissel Bargaining Order: *Gissel* bargaining orders are orders to bargain with a union that may no longer have majority support because of serious employer ULPs that have poisoned the possibility of a fair election.

Impact Analysis: Provides an analytical framework for classifying cases so as to differentiate among them in deciding both the resources and urgency to be assigned each case. All cases are assessed in terms of their impact on the public and their significance to the achievement of the Agency’s mission. The cases of highest priority, those that impact the greatest number of people, are placed in Category III. Depending on their relative priority, other cases are placed in Category II or I.

Injunctive Relief: A temporary remedy sought in case of egregious violations of the Act pending final action by the Board in which Counsel for the General Counsel asks a district court judge to issue an order requiring the charged party to cease and desist from engaging in violations of the Act and may also seek certain affirmative actions in order to return to status quo.

Injunctive Proceedings: The adjudicatory process by which Counsel for the General Counsel seeks injunctive relief, as described directly above, from a district court judge.

Interstate Commerce: In the U.S., any commercial transaction or traffic that crosses state boundaries or that involves more than one state. Government regulation of interstate commerce is founded on the commerce clause of the Constitution (Article I, section 8), which authorizes Congress “To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.”

Investigative Subpoena: Use of a subpoena during a case investigation to ascertain facts on which to base an initial administrative decision regarding the merits of charge allegations in jurisdictional issues.

Litigation: Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions.

“Make-Whole” Remedy: Offsetting an unlawfully discharged employee’s interim work search expenses against the amount of interim earnings deducted from backpay calculations.

Meritorious Unfair Labor Practice Charge: Charge allegations evidencing statutory violations.

“Mixed-Guard” Union: A union that has both security guards and non-guards as members.

“Nip-in-the Bud” Cases: Cases arising from allegations of unfair labor practices committed during union organizing campaigns.

Overage Case: To facilitate or simplify Impact Analysis, case processing time goals—from the date a charge is filed through the Regional determination—are set for each of the three categories of cases, based on priority. A case is reported “overage” when it is still pending disposition on the last day of the month in which its time target was exceeded. Cases that cannot be processed within the timelines established under the Impact Analysis program for reasons that are outside the control of the Regional Office are not considered to be overage.

P&P Committee: Practice and Procedure Under the NLRA Committee.

Petition: A petition is the official NLRB form filed by a labor organization, employee, or employer. Petitions are filed primarily for the purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

Petitioner: The party who presents a petition to the court.

Prosecutorial: Acts related to the process of litigating against a charged party when meritorious charge allegations are found.

Protected Concerted Activity: The National Labor Relations Act (NLRA) protects employees’ rights to engage in protected concerted activities with or without a union, which are usually group activities (two or more employees acting together) attempting to improve working conditions, such as wages and benefits.

Remedies: Data related to remedies obtained to resolve unfair labor practices, including backpay and offers of reinstatement.

Reinstatement: To put back or establish again, as in a former position or state.

Representation Cases: Initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer.

Secret-ballot Elections: A voting method in which voter's choices in an election or referendum are anonymous, forestalling attempts to influence the voter by intimidation and potential vote buying.

Settlements: A resolution between disputing parties about a legal case, reached either before or after court action begins.

Sua Sponte: A Latin phrase describing an act of authority taken without formal prompting from another party.

Social Media: Various online technology tools that enable people to communicate easily via the Internet to share information and resources. These tools can encompass text, audio, video, images, podcasts, and other multimedia communications.

Status Quo: A Latin phrase meaning the existing state of affairs, particularly with regards to social or political issues.

Statutory: Required, permitted, or enacted by statute.

Stipulated Election: The parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent.

Taft-Hartley Act: The Labor Management Relations Act, better known as the Taft-Hartley Act (enacted June 23, 1947) is a United States federal law that restricts the activities and power of labor unions. The Taft-Hartley Act amended the NLRA, informally the Wagner Act, which Congress passed in 1935.

Temporary Injunction: A court order prohibiting an action by a party to a lawsuit until there has been a trial or other court action, the purpose of which is to maintain the status quo and preserve the subject matter of the litigation until the trial is over.

Unfair Labor Practice (ULP): An unfair labor practice is illegal conduct by either a labor organization or an employer that violates the National Labor Relations Act.

Union: An organized association of workers formed to protect and further their rights and interests.

Withdrawals: Case resolution resulting from a charging party or petitioner deciding to withdraw the filing of an ULP charge or representation case petition.

APPENDIX C

Historical Performance Measures for Goals 1 and 2

Close meritorious (prosecutable) unfair labor practices on compliance within 365 days of the filing of the unfair labor practice charge.

Year	Interim Goal	Actual Performance
FY 2009	75.5%	79.7%
FY 2010	80.0%	84.6%
FY 2011	80.2%	83.2%
FY 2012	80.3%	83.8%
FY 2013	82.0%	82.4%

Resolve all charges of unfair labor practice cases by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or court judgment within 120 days of the filing of the charge.

Year	Interim Goal	Actual Performance
FY 2009	68.5%	71.0%
FY 2010	71.2%	73.3%
FY 2011	71.2%	72.5%
FY 2012	72.0%	72.7%
FY 2013	72.0%	73.3%

Resolve questions concerning representation in all representation cases within 100 days from the filing of the representation case petition.

Year	Interim Goal	Actual Performance
FY 2009	81.0%	84.4%
FY 2010	85.0%	86.3%
FY 2011	85.0%	84.7%
FY 2012	85.2%	84.5%
FY 2013	85.2%	87.4%

Historical Performance Measures for Goals 3 and 4

FY 2014 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies

Objective 1: Initiative 1

- The Division of Administration (DofA) established a Human Capital Planning Section (HCPS) to administer the Agency's human capital management program. The draft Plan containing human capital goals, objectives, and strategies is expected to be completed in the first quarter of FY 15.
- Office of Human Resources (OHR) partnered with OPM's Human Resources Solutions to pilot "USA Performance", a newly developed automated web-based performance appraisal system tool. It is designed to streamline the manual performance management process and increase visibility and transparency in performance management process. The use of USA Performance aligns performance plans with strategic goals, and ensures compliance with Federal performance management regulations. The pilot began in June 2014, with performance of senior executives and the next phase will involve GS and prevailing grade employees.
- OHR meets regularly with Headquarters and field managers to assist in collaborative efforts with employees and the unions on a variety of workplace issues such as maxiflex, telework, and performance management programs.
- DofA's Security branch was successful in reducing the reinvestigation backlog to approximately 750 from 1,018. The Agency expects the office to remain on target to complete the 20 percent goal, listed in the management strategies, next year.

- The DofA's Office of Employee Development (OED) expanded Skillport training software; electronically organized its developmental resources for Field Agents, including instructor modules, videos narrative resources; developed prototypes and piloted user-friendly online training for board agents; provided teambuilding to consolidated regions; and presented a 12-hour course on the "Seven Habits of Highly Effective People" to new Regional directors and a 90 minute workshop on "Promoting a Culture of Personal Accountability" that dealt with how to motivate people to take ownership of their work, an important skill for managing teleworkers .
- The Agency's Office of Equal Employment Opportunity (OEEEO) timely submitted the Agency's annual MD715 report for Fiscal Year 2013 to the EEOC, which provides a demographic analysis of the Agency workforce by gender, race, national origin, and disability, in all stages of employee life (e.g., hiring, grade level distribution, training, promotions, separations).
- OEEEO also provided a State of the Agency report to senior leadership to assist with strategies and enhance the diversity of its workforce.
- OEEEO and OHR initiated a collaborative work group to develop a Strategic Recruitment Plan for the Agency. As part of the plan, OEEEO posted to its web page recruitment resources for reaching out to diverse student populations of African American, Hispanic, Asian American and Pacific Islander, and Native American populations. It also sent out email communications to these resource organizations promoting recruitment through the Agency's Honors Attorneys program. OEEEO is also developing the Special Emphasis Program Manager role for each of these populations, as well as for disabled employees and veterans, to enhance the Agency's outreach initiatives to these communities

Objective 1: Initiative 2

- OHR began developing a Quality Assurance and Quality Control Unit to assess and improve the accountability process. The following action steps will be taken as a result of OPM's hiring reform:
 - ◆ Evaluate current designated examining authority and merit promotion hiring timeframes;
 - ◆ Identify the impact of negotiated agreements on hiring timelines;
 - ◆ Analyze and recommend methods for measuring improvement in timeliness;
 - ◆ Develop a schedule to meet hiring timeliness;
 - ◆ Identify actions needed to address barriers;
 - ◆ Prioritize occupations within respective divisions;
 - ◆ Train OHR staff on all tools available through USA staffing.
- OHR has begun working with stakeholders to standardize over 1,300 of the Agency's position descriptions.
- The Agency hired a new Disability Coordinator, who maintains applications for applicants that have contacted the Agency to be considered for employment under the "Schedule A" Hiring Authority, and OHR plans to host a number of training presentations for managers and supervisors on "Schedule A" Hiring, as well as on the Selective Placement Program.

Objective 2: Initiative 1

- DofA's Security Branch made improvements to its webpages, such that employees can find a host of information on physical security, personnel security, continuity of operations, classes offered by Department of Homeland Security, and policies from the Interagency Security Committee, and OPM Federal Investigative Service. Further, an Administrative Policies and Procedures Manual (APPM) on Personnel Security was updated and published and one on Physical Security is in draft form.
- DofA's Facilities and Property Branch (FPB) developed an extensive Communication Plan that continues to inform employees about the Headquarters relocation, including managing expectations related to the cultural transition to a reduced-space work environment, and it provided physical tours. The project, which is dubbed, "Total Workplace Solutions," also includes a web page devoted to all aspects of the new relocation including timing, neighborhood businesses, furniture, technology and other requirements.
- In addition, the FPB established a Headquarters Space Advisory Committee, which includes representatives from all Divisions and both employee Unions, to communicate updates on the new Headquarters
- Space Initiative and keep employees throughout the workforce informed on the latest project information.
- HCPS launched a Human Capital web page in order to provide a platform to distribute a wealth of information and guidance about NLRB's human capital planning efforts.

- HCPS received and analyzed the 2013 Federal Employee Viewpoint Survey results and provided an executive level briefing to Senior Management and is in the process of doing the same with the recently published FY 14 FEVS results.
- OHR developed the Honorary Awards program, where a number of employees were acknowledged during an awards ceremony, and it implemented a regular schedule for providing service awards.

Objective 2: Initiative 2

- OHR benchmarked other agencies to identify ways to improve the on boarding program, and, along with Senior Managers, revamped the Agency's on-boarding process.
- OHR provided one-on-one and group instructions to managers to assist them in providing guidance in understanding their role in communicating expectations to Agency employees on performance management.
- The former Director of Administration produced a quarterly Significant Happenings Report to report the work of the employees within the Division to senior management, and planned a Division-wide Recognition Day to celebrate the work of the Division and foster camaraderie, which was attended by the General Counsel, Deputy General Counsel, Assistant General Counsel, and Board Members.

Objective 2: Initiative 3

- The following policy statements were released to Board agents in 2014: Equal Employment Opportunity Policy Statement; Policy Statement on the Prevention of Unlawful Harassment, Including Sexual Harassment; Alternative Dispute Resolution (ADR) Policy Statement; and the Diversity and Inclusion Policy Statement.

- The MD-715 was timely submitted electronically in first quarter of 2014 calendar year to the EEOC providing FY 13 information.
- The NLRB offered Agency-wide diversity training, which was mandatory for managers and supervisors, on Transgender in the Workplace in 2012, made the sessions available on the OED website, and issued a related Agency-wide memo.
- With encouragement from senior leadership, the OEEEO, OHR, and OED have partnered to develop a more robust diversity and inclusion training program. In furtherance, of this goal, senior leaders and representatives from various divisions have attended and accessed external programs.
- In 2003, the Agency established a mentoring program on the General Counsel-side for newly-hired and newly-transferred professionals and support staff in order to support the mandate that the Agency have workforce that reflects the diversity of our Nation. In FY 2014, the General Counsel asked that the program be revamped and the Mentoring Committee is working on doing so, including exploring best practices in mentoring at other federal agencies.
- The OEEEO relies on the Agency's cadre of collateral duty Special Emphasis Program Coordinators (SEPCs) to assist the Agency in its efforts to build and maintain an inclusive work environment. OEEEO conducted four-one hour videoconference training sessions in 2013 and 2014. The training supports the SEPCs in carrying out their responsibilities and duties and also provides a forum to share ideas and best practices.
- OHR has educated and encouraged management to utilize the Local Veterans

Employment Representative Program to recruit for various positions. As a result, the Agency has hired at least eight veterans through the program.

FY 2014 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Objective 1: Initiative 1

Measure:

- The Agency's enterprise case management system, Next Generation Case Management System (NxGen), was made to replace 11 separate legacy systems and integrate into a single unified solution that leverages multiple technologies.

NxGen presently manages:

Internal users	1,350
Cases	263,355 (+10%*)
Case Actions of the Agency	766,343 (+27%*)
Documents, images, and videos, each linked to its Action and Case	4,678,794 (+47%*)

* All percentages are year-over-year calculations

Measure:

- The Agency soon will complete the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, will be migrated into NxGen beginning in the first quarter of FY 2015.

Measure:

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions,

one party (USPS) and new 10 document types. The pilot recently has been expanded to two document types for all Regions. To date, 2,101 documents have been sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.

[10/1/2013 – 9/30/2014]

Number of E-Filings Received	29,127 (+15%*)
Number of Documents Received	43,031 (+13%*)
Number of Board and ALJ Decisions E-Served	737
Total Number of parties E-Served Decisions	55,191 (+3%*)
Number of E-Deliveries of Case Documents	2,101 (new process)

* All percentages are year-over-year calculations

Measure:

- The NLRB is committed to achieving the goals set forth in the President's Open Government Directive. The three principles of transparency, participation, and collaboration inform current and future plans for the Agency's information systems. With the near complete implementation of the NxGen, the Agency is able to provide improved information regarding its cases and significantly increase the number and type of case documents made available to the public. In FY 2014, the Agency also made substantial progress towards a new external search interface and public data warehouse that will continue to deliver on the goals of Open Government.

Number of NLRB Document Types Available for Public Access	197
Total Number of Case Documents Available for Public Access	346,109

Please see <http://www.nlr.gov/open/public-documents> for a list of the document types available to the public.

Objective 1: Initiative 2

Measure:

- In FY 2013, the Agency made the decision to expand the capabilities of the Office 365 Suite and utilize the cloud-based SharePoint offering. The Office 365 SharePoint solution provides all of the necessary components of a technology service catalog and complements the existing Intranet. In FY 2014, the Agency's governance and development teams focused on streamlining business processes through forms automation with workflow and routing.
- As an example of these efforts, and to support the Agency's new Collective Bargaining Agreement, the Administrative Systems team recently completed the development of and is piloting a comprehensive solution to automate the processes for requesting, routing and approval, and reporting for the following schedules: Telework, Alternate Work (e.g., Gliding Flex, Maxi Flex and 5-4-9), and Leave. Upon approval by a supervisor or manager, the requests are created as items on a shared Outlook calendar for each individual office so that all employees can determine where to contact someone if they are working, but not physically in the office. All approved items are then made available to the individual office's timekeeper for filing, processing and record keeping. Aggregate reports are also available to HR, which will significantly reduce manual data calls that are performed each year in preparation for reports sent to the Office of Personnel Management (OPM).

Measure:

- Currently, the Agency utilizes disparate networks for its data and video conferencing services and manages 52 legacy phone systems from different voice service providers in the Field and Headquarters. The segregation of data, voice, and video services results in an inefficient use of Agency resources and creates communication and collaboration silos within critical business processes. Additionally, the Agency's present communications infrastructure provisions remote access for certain business processes only to Agency laptops, with limited support for mobile and tablet devices.
- The objectives of the Agency's Unified Communication and Collaboration (UCC) effort are to provide enhanced functionality to Agency staff while achieving cost savings through such strategies as consolidating networks and taking advantage of lower cost technical alternatives and contract vehicles. Specifically, the Agency is trying to create a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road. The Agency awarded a UCC contract on September 24 and the Agency expects the implementation to take between eight and 12 months. After the initial investments in the UCC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.

Measure:

- With the increasing requests for collaboration, the Agency embarked upon efforts to implement SharePoint team sites to manage the need for document collaboration, discussion forums, wiki pages, and site mailboxes. Team sites are being created for all departments and divisions so that each office will have a secure place to store documents, create conversations, receive email alerts when changes occur, and collaborate on work products. Additionally, individual team sites are being created to support the various needs of the Agency. For example, to assist with the reduction of printed materials for conferences, team sites were created to review/edit presentations and conference materials and then store all materials to be made available to the participants. Furthermore, the Agency is addressing the need for document collaboration by geographically dispersed employees by providing access to the Office Online applications. This allows multiple employees the ability to simultaneously work on Word, Excel and PowerPoint documents, which provides increased collaboration and avoids confusion with managing multiple versions of documents that then need to be merged together.

Objective 1: Initiative 2**Measure:**

- All required reports to external regulatory bodies were prepared in accordance with established time lines.

Measure:

- OCFO has developed a formalized annual training plan for all allowance holders. During FY14, finance-related training was held as part of the Office Managers and Field Managers

trainings. Topics included Oracle Federal Financial processes, eTravel processes, and Federal Travel Regulations.

Measure:

- The OCFO Budget office has worked closely with the program offices and NLRB Senior Leadership to develop a detailed budget spend plan which serves to inform NLRB management for decision making.

Measure:

- During FY15 OCFO Finance Office plans to communicate obligation status reports to program offices through an automated monthly email. The development of the report has been completed within FY14 and the automated email generation will begin in FY 15. This report will help program managers to monitor their budgets at a more detailed level.

Measure:

- The Contracting Officers as well as the purchase card holders utilize the General

Services Administration's (GSA), Federal Strategic Sourcing Initiative (FSSI) in the ordering of supplies and services. By doing so, the NLRB has increased its utilization of strategic sourcing from a savings rate of 14.47 percent in FY13 to 18 percent. In FY14, the NLRB increased its utilization of strategic sourcing higher with a savings rate of 34 percent; yielding a savings of \$106,168.

Measure:

- As demonstrated in the chart below, the NLRB increased the percentage of contract awards to small, disadvantaged owned businesses from Fiscal Year 2012 to Fiscal Year 2013 in all categories. During fiscal year 2014, the NLRB awarded the Unified Communications contract almost \$2M to a large business which impacted the small business categories. The Acquisition Management Branch will focus on making small businesses the supplier of choice in FY 2015.

FISCAL YEAR	TOTAL SMALL BUSINESS	WOMAN OWNED	SMALL DISADVANTAGED	VETERAN OWNED
Fiscal Year 2012	31.3%	7.9%	12.3	3.9%
Fiscal Year 2013	34.2%	17.9%	7.4%	4.9%
Fiscal Year 2014	29.1798%	12.4208%	10.1716%	4.4219%

Objective 2: Initiative 1

Management Strategies:

- The Agency formed an outreach committee, comprised of board agents from divisions, branches and offices throughout the Agency. The committee continues to explore new modes and methods to educate the public, particularly those, such as youth and immigrant populations, that may be unfamiliar with the Agency and the Act and may be more vulnerable to exploitation due to their lack of knowledge of workplace rights.
- In order to educate more audiences through non-traditional outreach, particularly those prone to exploitation, the Agency is trumpeting successes and recent cases of interest, as well as including human interest stories, so that the public can more easily relate to the information being shared. The CPAO is issuing news releases of recent cases, such as Board and court decisions, settlement agreements, and cases involving injunctive relief or compliance.
- The Agency is invigorating local relationships for joint outreach and local working group forums where there are regular meetings with board agents from other agencies to work on various joint projects/materials. These federal, state and local agencies include, but are not limited to, EEOC, local Human Rights Commissions, Wage and Hour, OSHA, Whistleblower, Unemployment Compensation, and Office of Special Counsel. Two Headquarters managers are tasked with facilitating quarterly roundtable discussions with Regional outreach coordinators to ensure sharing of best practices/materials. The Agency is also reviewing MOUs entered into decades ago and re-establishing connections with counterparts.
- As to Letters of Agreement (LOA), the Agency is continuing efforts to reach out to foreign embassies/ministries/consulates and finalize letters of agreement for education of workers and business owners. In FY 2013, the Agency executed a LOA with the Mexican embassy and selective consulates, and in FY 2014, with the Ministry of Ecuador. Efforts to parlay those national agreements into local agreements between Regions and consulates, and to provide materials to Regions for assistance with education per the LOA are ongoing.
- The Agency is culling and editing current outreach materials so that Board Agents have presentations with a uniform brand for Powerpoints and other formats in a central repository for use nationwide.

Objective 3: Initiative 1

Measure:

- Over the past year, the Chairman and General Counsel have jointly promoted several ethics program initiatives to all employees and visibly participated in the values-based training program presented in FY 2014. The training engaged employees in discussions of ethical decision making principles and considered how ethical decisions are made within the context of our own personal core values and those of the Agency. The training also stressed personal responsibility in the ethical decision making process.
- The General Counsel and Chairman also increased the staff of the Ethics Branch to ensure that sufficient resources are devoted to the program to facilitate effective program management and outreach to all employees.
- The NLRB Ethics Staff have met with the Board Members and the General Counsel

collectively and separately to discuss a range of government and legal ethics issues.

- The NLRB's Designated Agency Ethics Official has full access to Agency leadership and can approach them for assistance when the need arises.
- In addition, the combining of the NLRB's Legal Ethics Program with the Government Ethics Program has provided NLRB employees with a cohesive, comprehensive program, thus raising the visibility of the program among employees. Employees now know that they have one office where they can go with ethics questions and issues, where their questions will be addressed from the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

Measure:

- The ethics staff was proactive in expanding the number of training products available to all NLRB employees. They developed a number of one-page, easy-to-read Job Aids designed to help employees identify potential government ethics issues and provide additional guidance where informational gaps might exist. The Job Aids focused on conflicts of interest, including both financial conflicts and appearance issues; the acceptance of gifts from outside sources; the acceptance from and the giving of gifts to coworkers; the Hatch Act; outside employment; the outside practice of law; and the government's 14 Principles of Ethical Conduct. The Chairman and General Counsel promoted the usefulness of the Job Aids and identified them as a valuable tool for promoting an ethical culture at the NLRB in a memo to all NLRB employees. Job Aids on legal ethics topics have been prepared as well.
- The Ethics web page on the NLRB's Intranet was revamped and rebranded as the "Ethical Highway." Thru the web page, ethics guidance materials are readily available to all NLRB employees. Articles on ethics appear monthly in the NLRB's employee newsletter, the All Aboard, alternating between legal ethics topics and subjects involving the government's rules and regulations. Monthly tips on legal ethics ("On the Road with the Ethics Code") are issued to the NLRB's Field Offices, and each Region has an ethics coordinator who assists in promoting them.
- The New Employees Ethics Orientation has been converted to an online module in the Agency's learning management system and is assigned to new employees as part of the on-boarding process. Completion of the module can be tracked within the system. This ensures that all new employees receive an orientation to the government's ethics rules and regulations and provides a brief overview of the screening wall that separates the adjudicatory and prosecutorial sides of the Agency. Forty-seven new employees were trained in FY 2014. The module has also been packaged as a refresher course for incumbent employees, which they can access anytime through the same system.
- The Ethics Staff provided in-person briefings on both government and legal ethics to the Agency's summer student interns, student volunteers, and detailees, and will continue to provide briefings at Agency conferences where they can reach large, diverse audiences. In August 2014, an ethics presentation was provided at the NLRB Regional Management Conference in Washington, DC. During the latter portion of FY 2014, the Ethics Staff introduced two ethics training initiatives. In

June, they began a new legal ethics training program for attorneys and field examiners in the NLRB's Field Offices that covers skip counsel issues and attorney-client privilege. During the course, Agency employees complete a "Testing Your Knowledge" quiz to test their knowledge in these areas.

- In September, the Ethics Staff launched a training campaign for all Agency employees on the benefits and pitfalls of using email in the NLRB's casehandling process. This training is being presented in weekly broadcasts and uses a variety of delivery methods, such as webcasts, podcasts, and job aids, to convey information. The Chairman and General Counsel promoted the program to employees prior to the launch of the campaign which helped to raise awareness of the importance of the training. The training campaign began in September and will conclude in December 2014. In addition, each weekly segment will be posted on the "Ethical Highway" page of the NLRB Insider after its initial broadcast.

Measure:

- As of September 30, 2014, 87 percent of ethics inquiries were resolved within 5 business days. Of the 557 inquiries received from November 14, 2013 through September 30, 2014, 447 required guidance memos that addressed the inquiry from the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

Measure:

- As of September 30, 2014, 100 percent of the financial disclosure reports received were reviewed and certified within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of

interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

Measure:

- The NLRB uses an electronic financial disclosure system, FDOOnline, for the filing and review of the Confidential Financial Disclosure Reports which are filed by designated employees within the Agency.
- While FDOOnline contains a component for filing Public Financial Disclosure Reports (OGE Form 278), the NLRB's Designated Agency Ethics Official decided to wait to require the electronic filing of public reports until after the Office of Government Ethics unveils the new electronic system it is currently testing. Until such time as that system is made available for use, Public Financial Disclosure Reports are still filed in paper copy, even though filers are encouraged to use the online, fillable version of the OGE Form 278 developed by the Office of Government Ethics.

Objective 3: Initiative 2

Measure

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response. The OCIO responded completely and timely to internal audits and information requests, including:
 - ◆ Audit of the NLRB Fiscal Year Financial Statements
 - ◆ Audit of FY 2013 Sequestration – Preparation, Implementation, and Impact
 - ◆ Cloud Computing Audit
 - ◆ Federal Managers' Financial Integrity Act (FMFIA)

Objective 3: Initiative 3

- Responses to external auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response.
- The CFO participated in the GAO's Regulatory Cost Benefit Analysis (GAO 451043).
- The OCIO responded completely and timely to external information requests, including:
 - ◆ Questions posed in the Office of Management and Budget Memorandum M-14-04, Fiscal Year 2013 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management
 - ◆ The quarterly requirements for FISMA, Trusted Internet Connection (TIC), and Senior Agency Official for Privacy (SAOP) reporting
 - ◆ Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
 - ◆ NARA's Annual Records Assessment and the OMB Records Directive (M-12-18) Report
- The OCIO responded appropriately to external technology mandates, including:
 - ◆ Having successfully consolidated its infrastructure, the Agency is taking full advantage of cloud computing's benefits (Cloud First, *Federal Cloud Computing Strategy*) to maximize capacity utilization, improve IT flexibility and responsiveness, and minimize cost. Current efforts include utilizing:
 - Email repositories and services; the Agency repurposed the nearly one million dollar investment in its email infrastructure to extend the lifespan of its NxGen on-premises infrastructure
 - Replacing its end-of-life collaboration platform with Microsoft's SharePoint solution
 - Supplanting its near end-of-life network attached storage and desktop backup with Microsoft's Office 365 One Drive for Business solution
 - ◆ Amazon's Elastic Compute Cloud to:
 - Host its NxGen case management development environment
 - Save approximately \$500,000 over the next 6 years by hosting its legacy Momentum financial data rather than accepting the proposal of the Department of the Interior's (DOI) Interior Business Center (IBC)
 - ◆ The ServiceNow cloud Information Technology Services Management (ITSM) platform, which the OCIO uses to be more transparent, provides Agency staff with multiple ways to get quality support, and as the technology enabler of its internal effectiveness initiatives
 - ◆ GovDelivery cloud services to deliver all case participant communications, including for its electronic services initiative.
- The Agency was acknowledged for having achieved compliance with OMB's TIC Initiative, version 2.0. As such, it is one of a few small civilian agencies that have complied with this mandate.

Objective 3: Initiative 4**Measure:**

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of seven days for requests received from October 1, 2013 to September 30, 2014. The Agency received 4,458 requests for this period and responded to 4,093 of those requests in 1-20 days. Thus, 91.81 percent of the FOIA requests were processed within the 20- day statutory time period.

Measure:

- The Agency sought an extension of time to process a request beyond the 20-day period in 7.08 percent of the FOIA requests received during this time period.

Measure:

- The Agency received 20 FOIA Appeals from October 1, 2013 to September 30, 2014. The average elapsed days to process the appeal was 22 working days. In 9 of the 20 FOIA appeals, a final determination was made within 20 working days. Two of the appeals received during this period were pending as of September 30, 2014.

FOIA centralization is underway and will be expanding in the coming months. Centralization of FOIA processing will ensure greater consistency and efficiencies in FOIA handling. In August, the NLRB's FOIA Branch hired a new Branch Chief, who has provided assistance towards full centralization of the processing of Regional FOIA requests.

**FY 2015 Strategic Goal 3 (Support):
Achieve Organizational Excellence****Management Strategies:****Objective 1: Initiative 1:**

- The Office of Human Resources (OHR) collaborated with executive officials to refine and expand its performance management program. It held training sessions for Executive staff, Regional staff and Headquarters managers and supervisors on relevant areas of the performance management system. The training focused on the significance of establishing performance plans, providing timely mid-year progress reviews, ensuring that all employees are given appraisals, aligning performance plans with the Agency's strategic goals, and ensuring that performance plans hold employees accountable for achieving results appropriate to their level of responsibility.
- A comprehensive Strategic Human Capital Plan is being developed.
- OHR and the Division of Legal Counsel collaborate regularly to ensure adherence to Agency policies and collective bargaining agreements.
- Management and union representatives successfully work on a Reasonable Accommodations Policy, which was approved by the EEOC.
- OHR issued guidance that expounded on workplace flexibilities for childbirth, adoption, foster care and elder care.
- OHR, on behalf of various NLRB organizational units, issued many recognition awards to employees during FY 2015, including length of service, project and retirement awards.

- OHR held its annual Administrative Professional Day Recognition Ceremony on April 23, 2015 to honor the Agency's outstanding administrative professionals.
- The Agency held its second annual Honorary Awards Program, which recognized eleven employees in a number of different categories.
- The Agency developed and implemented an Agency-wide Cultural Enhancement Program, which will enhance the ability of our increasingly diverse workforce to better work together, and to better understand the cultural differences among the public we serve. The program was launched with holding an "all hands" meeting which featured internal and external speakers who addressed the importance of inclusion and civility to a productive workplace. This was followed by online interactive module and podcasts in which a diverse group of employees shared their life and work experiences, as well as videos and online forums for employees to continue to discuss these topics.
- The Office of Employee Development (OED) also developed and rolled out online training materials, enabling Headquarters employees to better utilize Outlook 2013, Lync and Word 2010, and produced scenario-based videos on ethics topics.
- OED updated the Agency's Management Training Program by developing components such as: enhanced individual development planning and mentoring; obtaining the skills needed for the next level of management; and a pre-supervisory program.
- The General Counsel and the Deputy General Counsel addressed Regional and Headquarters staff in Divisions/Branches/Offices

acknowledging and congratulating them on their achievements, and seeking suggestions for Agency improvements.

Objective 1: Initiative 2:

- OHR and the Office of Equal Employment Opportunity (OEEEO) worked together on the Strategic Recruitment Committee and are developing a Strategic Recruitment Plan.
- OHR routinely partnered with the Local Veterans Employment Representative Program (LVER) to recruit for commonly filled positions, and placed at least five veterans through this program this fiscal year.
- The Agency regularly uses the Veteran's Recruitment Appointment (VRA) Special Hiring Authority to place disabled veterans.
- OHR worked to bolster the integrity of its recruitment process and adherence to OPM regulations. It created a series of internal procedures and manuals that are used to correctly navigate the process. It worked diligently with OPM to redraft its Excepted Service and Pathways policies to ensure that adequate consideration is provided to viable candidates. Furthermore, in direct correlation to OPM's Hiring Reform and the 80-Day Hiring Model, OHR attained an average 74-day hiring rate from the beginning of the process to the on-boarding of the employee for FY 2015.
- OHR implemented a process for applicants with disabilities (Schedule A) which includes a specific mailbox for these applications, retention for 30 days, and focused review when a new vacancy arises in the Agency. If an applicant's qualifications prove to be a match for the job, that information will be forwarded to the hiring manager for further consideration. Presently, applicants are

made aware of the program through Agency vacancy announcements on USAJobs and OPM's website.

- The Agency continued to utilize USAJobs in announcing vacancies to a broad category of applicants, including veterans and persons with disabilities.
- OHR entered into a Memorandum of Understanding with the Department of Veteran Affairs to participate in the "VA for Vets Program," in order to process non-competitive hiring actions for veterans and to take part in the in "Feds for Vets" initiative.

Objective 2: Initiative 1:

- Facilities and Property Branch (FPB) continued its extensive Communication Plan to keep Headquarters staff informed on matters related to the relocation of the Headquarters facility.
- Following the move, FPB implemented a practice requiring FPB employees to courtesy copy all branch employees on building related requests to ensure that multiple staff are not working on the same task. This practice of sharing information has also resulted in staff feeling more included and aware of work matters transpiring within the branch.
- The Security Branch continued to issue its customer feedback questionnaire, soliciting information to ensure that customer assistance is timely and professional.
- OHR improved communications by distributing numerous documents and notifications via its Ask HR Program.
- The Agency analyzed the 2014 Federal Employee Viewpoint Survey results and is implementing best practices and strategies for strengthening employee engagement and

organizational performance through focused leadership and increased communication.

- In response to the Federal Employee Viewpoint Survey results from FY 2014, Agency managers developed action plans that included: greater transparency, sharing of information, and solicitation of employee input.
- Guidance information on Employee Viewpoint Survey (EVS) action planning, and best practices involving effective leadership, communication, and engagement, was posted to the Human Capital Planning internal web page.
- The Human Capital Planning Officer (HCPO) developed a structured communication plan to increase employees' awareness of the EVS. The response rate to the 2015 EVS increased by 15 percent and there was a 4 percent increase employee engagement scores and a 5 percent increase in global satisfaction scores.

Objective 2: Initiative 2:

- OHR met with incoming Honors Attorneys to seek their feedback on the onboarding process, and how it could be enhanced and improved.
- Training was provided to managers/supervisors on the appraisal process, including how to write performance appraisals, performance management requirements, and their role in communicating expectations to Agency employees on performance management protocols and processes. The training highlighted the importance of getting employees involved in creating their performance plans and having regular feedback discussions with employees.
- The Congressional and Public Affairs Office issued news releases on case successes.

- The General Counsel and the Deputy General Counsel addressed Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them in their achievements, and seeking suggestions for Agency improvements.
- Significant organizational accomplishments are also regularly highlighted to all staff in the Agency newsletter.

Objective 2: Initiative 3:

- OEE0 collaborated with OED and the Division of Operations-Management to design and implement a foundational and ongoing diversity and inclusion training program for all Agency employees in alignment with Executive Order 13583.
- OHR continues to provide training to Agency hiring managers on special hiring authorities, including Schedule A, in alignment with Executive Order 13548.
- The Management Directive “MD715” is an affirmative EEO program by which federal agencies can assess, identify deficiencies and conduct barrier analysis of obstacles to equal employment opportunity and develop ongoing action plans to correct the self-identified deficiencies and work collaboratively to remove identified barriers. The NLRB submitted its report in March 2015 to the EEOC.
- Agency SES Leadership participated in external diversity and inclusion training.
- OEE0 prepared four policy statements that were adopted and issued by Agency leadership on 1) Agency EEO Policy; 2) Statement on the Prevention of Unlawful Harassment; 3) Agency Statement Promoting Alternative Dispute Resolution; and 4) Diversity and Inclusion Policy Statement.
- OEE0 partnered with OHR to incorporate language describing specific standards for inclusion in supervisors’ and managers’ performance appraisals to measure management accountability on building and maintaining an inclusive work environment.
- The General Counsel’s Mentoring Workgroup analyzed the Agency’s existing mentoring program and made recommendations on how mentoring can be further developed as a tool to maintain a diverse workforce. In response to the General Counsel’s request, the workgroup investigated mentoring models at other federal agencies and their best practices for implantation.
- OEE0 designated staff as Special Emphasis Program Managers (SEPMs) responsible for developing program initiatives that enhance employment opportunities for specific demographic populations and tools to support employee affinity groups.
- OEE0 supports programming initiatives for the Agency’s cadre of collateral duty Special Emphasis Program coordinators.

FY 2015 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Objective 1: Initiative 1:

Measure:

- The Agency completed the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, was migrated successfully into NxGen in September. NxGen was designed and implemented to replace 11 separate legacy systems and integrate them

into a single unified solution that leverages multiple technologies. This was the most comprehensive technology project undertaken at the NLRB, and its success has been essential to the Agency's mission.

NxGen presently manages:

Internal users	1,350
Cases	286,117
Case Actions of the Agency	876,076
Documents, images, and videos, each linked to its Action and Case	6,050,259

Measure:

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. In FY 2015, 781 documents were sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.
- On April 14, 2015, the Agency expanding its electronic filing program to enable constituents to E-File charges and petitions, the two initiating documents for the Agency's cases. The Agency has received 3,098 electronically filed charge and petitions from the launch of the new service through the end of the fiscal year. Over the course of the fiscal year, the Agency received 58,662 documents of all types through its E-filing program and electronically delivered 3,422 documents to nearly sixty-thousand parties.

Measure:

The NLRB has counted millions of votes, investigated hundreds of thousands of unfair labor practice charges, and issued thousands of decisions. The numbers tell an important part of the Agency's story. Making what we

do accessible to the public is an important part of the NLRB's mission. For example, the total number of case documents available for public access was 692,456, including Tally of Ballot information. This data is downloadable for analysis at <https://www.nlr.gov/news-outreach/graphs-data>.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the document types available to the public.

Objective 1: Initiative 2:

Measure:

- Through FY 2015, the Administrative Systems (AS) team actively sought to develop automated solutions to streamline Agency processes.
- The AS team completed a development effort to streamline the enrollment and management processes for the Voluntary Leave Bank. Dynamic reporting was also delivered to the managers and committee to provide aggregate statistics on many aspects of the system.
- The AS team also developed a workflow process for authoring, routing and editing, approving and publishing of documents. This repeatable process will allow groups of users to store documents centrally in a secure authoring library, allowing documents to be finalized and then published to a separate location for consumption by a larger audience.
- The AS team completed a development effort for OHR involving organizing and categorizing all positions and position descriptions (PDs) within the Agency, modifying the PD library, assisting the OHR team with the creation of a set of standardized PD, and developing a streamlined process for OHR and Agency

supervisors / managers to update all PDs every three years.

- The AS team completed a development effort and migration of content and documents into a SharePoint site for all continuity of operations (COOP) members. Authors can now create, edit, route and receive approval for yearly COOP plans, and all COOP documents are now available at any time and may be accessed remotely.

Measure:

- The Agency awarded its Unified Communications (UC) contract on September 24, 2014, and now expects the implementation to take up to 20 months. After the initial investments in the UC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.
- The first priorities were to upgrade networks in the Agency's Field Offices and two existing datacenters, and to add network connections to its two new voice datacenters and new Headquarters. These changes add significant bandwidth to the Field Offices, are based on a new, more modern networking technology, and provide greater redundancy to our critical infrastructure. Forty Field Offices are now live on the new network, as are the two existing datacenters, one of the new voice datacenters, and the Agency's Headquarters.
- All employees in Headquarters now use Skype for Business (SfB) for voice calls, voicemail and instant messaging, as the OCIO deployed the necessary Microsoft Office software and delivered over 775 new unified communications devices.

- OCIO and Operations Management are in the process of planning the SfB deployment to the Field Offices.

Measure:

- The AS team continued to build team sites, on request, for geographically dispersed employees to collaborate using Office Online applications, SharePoint lists and discussion forums. Enhanced capabilities continue to be added to allow for user-based filtering of content and more granular management of permissions for documents.
- The AS team completed a development effort for OHR, creating an "Ask HR" knowledge base, which consists of answers to common questions, and if no information is present, a workflow capability will allow a new question to be submitted, routed, and ultimately, become part of the knowledge base.
- The AS team also completed a development effort for the Office of the Chief Financial Officer (OCFO), creating an "Ask the CFO" knowledgebase, which consists of information related to the Acquisitions Management, Finance and Budget branches.

Objective 1: Initiative 3:

Measure:

- Required reports to external regulatory bodies were prepared in accordance with established time lines.

Measure:

- OCFO held monthly meetings with Contracting Officers and Contracting Officer Representatives (COR's) to discuss unliquidated obligation amounts, monitor burn rates, and request funding increases and deobligations.

Measure:

- OCFO continued to develop a formalized annual training plan for all allowance holders. During FY 2015, finance-related training was incorporated during the monthly obligation monitoring meetings, to include COR's who recently on-boarded with the Agency.

Measure:

- The Finance Branch hosted a training session for CORs and provided a tracking tool to enable increased accuracy and timeliness of reporting burn rates, unliquidated obligation amounts, request for increased funding, and request for de-obligation of funding.
- The Budget Branch worked closely with the program offices and senior leadership to develop a detailed budget spend plan, which is a living document of estimates and actual amounts and is updated monthly on the prior months execution.
- The Budget Branch has developed several tools for various budget execution line items to monitor timely obligation and liquidation of funds, such as monitoring GSA rent charges, individual training requests, and mass transit benefit funding levels. Some budget lines have demonstrated variable spending cycles during the year, which requires additional training to program managers on the importance of monitoring those cycles to ensure funding requests cover the requirements.

Measure:

- The Acquisitions Management Branch (AMB) provided training to Purchase Card Holders regarding electronic submission of monthly statements, and provided guidance on purchase card user registration via the Citibank portal.

- AMB also provided monthly and quarterly reports to the Associate General Counsel of Operations- Management, which provided greater insight and transparency on purchasing habits of field offices that it oversees.

Measure:

- The NLRB has increased the percentage of contracts awarded woman-owned and small disadvantaged business categories. With AMB's focus on small businesses as the suppliers of choice, continuing to increase the number of awards to small businesses is achievable.

Objective 2: Initiative 1:
Management Strategies:
Immigration Population

- The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.
- The Agency provided direct outreach to immigrant populations by:
 - ◆ Participating in Labor Rights Week activities
 - ◆ Speaking in Spanish and other languages at events organized by the consulates or other community groups to educate the public about the rights afforded under the NLRA
 - ◆ Holding news conferences to disseminate information helpful to immigrant communities
 - ◆ Participating in interviews on Spanish-language radio stations
 - ◆ Staffing phone banks to respond to inquiries from immigrant populations
 - ◆ Staffing booths at informational fairs
 - ◆ Responding to inquiries from individuals who seek consular services

- The Agency has joined with other federal agencies to educate the public by:
 - ◆ participating in the Vulnerable Workers Project
 - ◆ participating in numerous “listening sessions” with those from the Asian American and Pacific Islanders Community
 - ◆ Other Agency activities include:
 - meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes
 - meeting with members of the Commission on Human Relations to provide an overview of NLRA rights
 - making presentations about the NLRA to officials of the French, Colombian, Spanish, and German embassies
 - speaking at naturalization ceremonies to new citizens from approximately 35 countries about rights they have under U.S. labor laws
- The Agency signed an MOU with the Ministry of Foreign Affairs of the Republic of Colombia. Various Regional offices also held local signing ceremonies with local Colombian consulates, with follow-up outreach sessions.
- The Agency partnered with DHS, DOL (WHD, OSHA and OFCCP), OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.
- The Agency presented at the national EEOC EXCEL Conference in Washington, DC, on concerted activity in social media
- DOJ’s Office of Special Counsel hosted two webinars for NLRB field personnel to covering the intersection of the NLRA and immigration law.
- Internal Agency deliberations occurred concerning effective outreach methods, including targeting specific audiences through the use of twitter, You Tube, Facebook, and news aggregators.
 - ◆ Since its release in August 2013, the NLRB app has been downloaded 19,296 times
 - ◆ The Agency implemented a Sharepoint site available to all of its outreach officers. This site includes a centralized area for collecting outreach presentation materials and a discussion board for addressing outreach inquiries
 - ◆ The Agency maintains a link on its public website for outreach requests, which are routed to the appropriate Region
 - ◆ The Agency has inserted QR codes in its correspondence to direct the public to our website.

Youth

- The Agency led discussions for high school and middle school classes in English and Spanish concerning the development of the NLRA and the New Deal, as well as the workers’ statutory rights and the Board processes.
- The Agency held mock trials for schools to demonstrate how an unfair labor practice trial is conducted.
- The Agency engaged in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers.

- ◆ More Regional Offices are considering producing newsletters in electronic format for delivery through GovDelivery
- Outreach sessions for veterans and employee advocate organizations were held explaining Protective Concerted Activity, in particular.

Objective 3: Initiative 1:

Measure:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete our annual ethics briefing. This year's briefing served as a reminder to our leadership of all the available ethics training products.
- The "Braking Bad Email Habits" training series emphasized that Agency employees should use their government email in a way that complies with government and legal ethics rules, and avoids the disclosure of confidential case-related information. A related memo was sent to all field professionals to encourage those that had not yet reviewed the material to do so as it was an effective learning tool.
- The Ethics Office provided general ethics guidance to Board Members regarding the use of private social media accounts while serving as a Member of the Board, and met with the Deputy General Counsel, the Chief of Staff to the Chairman, and others to offer guidance in identifying potential conflicts of interest in an administrative program.
- At the request of the General Counsel, the Ethics Office developed and delivered a training session on Civility during the Attorney Trial Training and presented a similar session to Headquarters staff.
- The Ethics Office helped establish a reporting process that would ensure that newly hired and newly promoted employees receive required ethics training and complete required financial disclosure reports (as appropriate) in a timely manner.

Measure:

The Ethics Office continued to seek out opportunities to educate Agency employees about their ethical obligations.

During FY 2015 the following was provided:

- A conclusion to the "Braking Bad Email Habits" series that covered the ethical use of government email.
- A Skip Counsel and Attorney-Client Privilege training program was presented to nine Regional Offices.
- Monthly distribution of the "On the Road with the Ethics Code" Job Aids that provide timely legal ethics information to all board agents.
- Monthly Agency newsletter articles. These articles covered, where to find government and legal ethics information on the Agency website, how to navigate gift giving during the holiday season, and provided real-life examples of the consequences of violating criminal conflict of interest statutes.
- Ethics social media guidance for distribution to the Presidential Appointees.
- The redistribution of a Hatch Act job aid to serve as a reminder about partisan political activity.
- Presented legal ethics topics at two attorney conferences co-sponsored by the NLRB and assisted in planning the ethics programming for a conference.
- Provided ethics briefings to newly appointed Regional Directors.

- Distributed one-page Job Aid covering Seeking Other Employment.
- Partnered with the OED to begin development of two legal ethics training programs for online/on-demand distribution to all legal professionals.
- Developed and presented a training session on Civility. This program was offered to attendees at the Trial Training in August and to professionals in Enforcement Litigation, CCSLB, and the Washington Resident Office.
- Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as “prejudging” a case, and lead to requests for recusal.

Measure:

- As of September 30, 2015, the Ethics staff received 622 inquiries and 87.7 percent were resolved within 5 business days.

Measure:

- As of September 30, 2015, 100 percent of the financial disclosure reports submitted were reviewed within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

Measure:

- Ethics staff rolled out the Office of Government Ethics (OGE) electronic filing system to all filers of the OGE 278. This included:
- Meeting with OGE project managers

- Attending user and administrator training sessions
- Completing systems and user testing to ensure that NLRB employees would be able to use the system via the NLRB network and agency provided laptops
- Finalization of NLRB Filer training materials to include: job aids, user guide, demonstration videos, and online training module
- Creation of 278e Integrity webpage on the NLRB Insider where all training materials are archived
- Live training sessions on how to file your 278e in Integrity for the first time

Objective 3: Initiative 2:

- The OCIO responded timely to internal audits and information requests including:
 - ♦ Audit of the NLRB Fiscal Year Financial Statements
 - ♦ Fiscal Year 2014 Review of Internal Controls (FMFIA Survey)
- The OCFO submitted timely Corrective Action Plans as required in response to the Fiscal Year 2014 Financial Statement Audit and also timely prepared a corrective action plan for OIG Travel Audit OIG-AMR-75-15-02. The actions that were taken and submitted to remediate recommendations found in Audit OIG-AMR-65-11-03 “Purchase Cards” were reviewed by the OIG.

Objective 3: Initiative 3:

The OCIO responded timely to external information requests including:

- Questions posed in the Office of Management and Budget Memorandum M-15-01, Fiscal Year 2014-2015 Guidance on Improving

Federal Information Security and Privacy Management Practices

- Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
- NARA's 2014 Records Management Self-Assessment
- FY 15 Q1 Federal Information Security Management Act (FISMA) Data Call
- Trusted Internet Connection (TIC) POA&M February 2014 Data Call
- FY 15 Q2 Federal Information Security Management Act (FISMA) Data Call
- Multiple security- and privacy-related ad hoc data calls, including for MS15-011 software "bug" and Indicators of Compromise (IOCs) related to OPM's personnel systems data breach.

Objective 3: Initiative 4:

Measure:

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of fourteen days for requests received from October 1, 2014 to September 30, 2015. The Agency received 4,644 requests for this period and responded to 3,543 of those requests in 1-20 days. Thus, 78.34 percent of the FOIA requests were processed within the 20-day statutory time period.

Measure:

- The Agency sought an extension of time to process a request beyond the 20-day period in about 20 percent of the FOIA requests received during the fiscal year.

Measure:

- The Agency received 24 FOIA Appeals from October 1, 2014 to September 30, 2015. The average elapsed days to process the appeal was 24 business days.

FY 2016 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies: Employee Development

- The Office of Human Resources (OHR) continued its partnership with the Office of Personnel Management (OPM) on the implementation of USA Performance, a new performance management reporting system.
 - ◆ OHR issued a memorandum titled Performance Management Validation Cycle to all Agency employees to inform that all management officials had to complete a Performance Management Validation Spreadsheet certifying that they had issued properly executed performance plans to all of their employees.
 - ◆ OHR completed a data validation, which showed that more than 86 percent of employees were issued properly executed performance plans. OHR's goal of 100 percent execution of performance plans will be achieved with the full implementation of USA Performance in June 2017.
- The Office of Employee Development (OED) developed online content for legal writing and provided legal writing coaching for Headquarters employees.
- OED is updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance released by OPM on September 28, 2015.

- The Security Branch worked with OED to release the 2016 Continuity of Operations Training for Agency personnel via Skillport, and also hosted an Active Shooter Training Event at NLRB Headquarters, which was internally posted for access by all employees.
- In compliance with OPM's hiring reform efforts, OHR implemented a Standard Operating Procedure to provide a detailed explanation and overview of the processes to be followed when a vacancy has been identified and when positions are filled internally.

Workforce Management

- OHR continued to utilize the Workforce Recruitment Program for College Students with Disabilities as a hiring flexibility for managers to recruit qualified postsecondary students and recent graduates with disabilities who are interested in summer internships or permanent jobs.
- OHR leveraged its relationship with U.S. Department of Veterans Affairs through the Feds for Vets Program, which allows for the recruitment of veterans under various special hiring appointing authorities, such as veterans who are 30 percent or more disabled. Under the program, approximately five special hiring appointments were completed and one appointment was converted to a career-conditional appointment.
- The Human Capital Planning Office (HCPO) implemented a communication plan to encourage employees to take the Employee Viewpoint Survey (EVS), which included guidance on monitoring the participation rates, talking points, and FAQs.
- OHR made enhancements to the New Employee Orientation that includes more information about the Agency to help new employees transition successfully.
- The Office of Equal Employment Opportunity (OEEO) developed and implemented a training program mandatory for all supervisors' managers and senior executive leaders on whistleblower rights and protections for all Agency employees.
- OEEO recommended that supervisors' and managers' appraisals contain more specific language to measure their efforts to maintain an inclusive work environment, as an action item from the MD715 report submitted to the EEOC.
- OEEO, OED, and the Division of Operations-Management collaborated in the Agency workgroup on the Culture Enhancement Program and rolled out training podcasts and interviews from a diverse array of Agency employees in segments throughout the fiscal year.
- OEEO sponsored the Agency's network of Asian American and Pacific Islander employees in its request for support from Agency leadership. OEEO conducted a briefing with Agency leadership on the topic of Employee Resource Groups (ERGs).
 - ◆ There was a briefing by OPM diversity and inclusion experts for Agency leadership to address questions about ERGs.
 - ◆ Consultations with the unions representing Agency employees will assist OEEO when drafting final recommendations to Agency leadership.
- OEEO and OHR briefed leadership on the Strategic Recruitment Plan and received critical feedback for the plan. OEEO and OHR

are working to implement the plan in early fiscal year 2017.

- OEE0 develops and hosts special emphasis observances at Headquarters, some of which have been made available to field offices through simultaneous broadcast and/or digital recording.

Motivation

- HCPO conducted 16 EVS organizational assessments with senior executives on the 2015 EVS results focusing on: identifying Agency trends/ barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enable the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and action planning efforts.
- ◆ During the organizational assessments, results were provided and the two EVS Agency-wide strategic areas of focus, effective leadership and communication, were discussed.
- ◆ Agency leadership will be implementing action plans/best practices designed to drive higher levels of employee satisfaction and engagement within their respective organizations, with a particular focus on improving effective leadership and communication.
- ◆ The HCPO also developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.

FY 2016 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Information and Technology:

The Agency uses a legacy case tracking solution called NxGen which is an enterprise case management system.

The NxGen System presently manages:

Internal users	1,368
Cases	309,700
Case Actions of the Agency	1,001,206
Documents, images, and videos, each linked to its Action and Case.....	7,543,929

The Agency expanded electronic distribution of case documents in FY 2016 through the USPS for 15 document types, resulting in 626 documents being sent to the USPS electronically and savings for the NLRB.

The Agency uses an electronic filing program (E-File) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	51,229
Number of Documents Received	79,011
Number of cases filed thru E-Filing Charges and Petitions.....	9,958
Number of Board and ALJ Decisions E-Served.....	803
Total Number of parties E-Served Decisions.....	54,262
Number of E-Deliveries of Case Documents	3,546

The total number of case documents available for public access in FY 2016 was 984,663

In FY 2016, the Agency expanded the use and capabilities for electronic filing to enable parties to E-File charges and petitions using an

online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed thru Charge and Petition Wizard was **805** in FY 2016.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the 564 document types available to the public.

- The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- The team automated and launched the process of authoring, editing, approval and publishing of Operations-Management memorandums.
- The team completed the automation of the training request and approval process by developing a web-based form with routing, approval, data storage for advanced reporting, and records management.
- The Agency awarded its UCC contract on September 24, 2014. Through FY 2016, 48 Field Offices, the two existing datacenters, two new voice datacenters, and the Agency's HQ were upgraded to the new network and 47 field offices were migrated fully migrated to Skype for Business.
- In FY 2016, the OCIO deployed over 1020 iPhone 6's and 6-Pluses to the Field.

Financial Management:

- To enhance internal controls of the purchase card program, Acquisition Management Branch (AMB), in coordination with the Budget Office implemented a process by which quarterly target amounts for purchase card spending are sent to each of the

Headquarters and Regional Offices. These amounts are disseminated at the beginning of each quarter to the Office of Operations-Management. Operations-Management is responsible for communicating specific dollar amounts to the respective Regional Offices, and for tracking the overall expenditures from the regional offices.

- ♦ In addition to quarterly target amounts sent to the Headquarters Offices, all headquarters purchase card holders submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
- ♦ AMB provided monthly and quarterly reports to the Budget Office which offered greater insight and transparency on purchasing habits and spending. By spending hours analyzing what was being purchased on the p-card and working with the Budget Office, senior leadership had more visibility into that budget line item on the Spend Plan. Analysis of this data also identified purchases that should be on a contract and lead to the establishment of the HQ and field office quarterly bulk purchases.
- In the Agency's continuing effort to increase its financial integrity, financial statement crosswalks were established in order to accurately and efficiently integrate general ledger account balances to the NLRB financial statements. This reduces the timeframe it takes to produce the statements.
- Updated and submitted the NLRB Travel Card Management Plan, as well as travel charge

card metrics, to OMB per the A-123 Appendix B guidance.

- Developed and disseminated procedure guides for witness payment processes to allow for more timely payments.
- Developed and disseminated travel reimbursement processes internally with accounting technicians and externally with office managers and travel arrangers to increase accuracy in travel reimbursements.
- Successfully implemented the Undelivered Orders (UDO) review process, performed on a quarterly basis that assists in liquidating obligations timely and accurately.
- As demonstrated in the chart below, the NLRB has exceeded the statutory goals established by federal executive agencies in all categories except one, namely the service-disabled veteran owned small businesses. AMB continues to focus on small businesses as the supplier of choice, and particularly on increasing the number of awards to service-disabled veteran owned small business.
- During FY 2016, the Agency reported a total of \$20.26M and 372 contract actions in the Federal Procurement Data System (FPDS). Of this amount, \$7.4M and 181 actions went to small businesses.

Fiscal Year SBA Goaling Report

Category	Goal	2016	2015	2014	2013
Small Business	23%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	3.43%	2.13%	2.27%	0.84%

Agency Outreach

- Designated Immigration Coordinators in each Regional office act as a liaison between the office and Headquarters staff regarding casehandling issues that may affect the immigrant worker community.
- The Agency prepared outreach materials for immigrant communities for use during outreach events, and a letter that outreach coordinators may use to introduce themselves to organizations that serve immigrant communities and offer outreach services. The outreach coordinators have been provided with a “collaboration packet” with the contact information for their outreach counterparts with the EEOC, WHD, and OSHA.
- During FY 2016, the Agency provided direct outreach to immigrant populations by:
 - ◆ Speaking in Spanish and other languages at events organized by the consulates or other community groups, such as the Workplace Justice Project to educate the public about the NLRA
 - ◆ Participating in interviews on Spanish-language radio stations
 - ◆ Responding to inquiries from individuals who seek consular services
 - ◆ Speaking at naturalization ceremonies to new citizens
 - ◆ Participating in Asian Public Interest and Public Service Panels
 - ◆ Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes
- Activities directed at the youth population include:
 - ◆ Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers’ statutory rights and Board processes
 - ◆ Holding mock trials for schools to demonstrate how an unfair labor practice trial is conducted
 - ◆ Engaging in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers
 - ◆ Participating in a union-sponsored youth-to-youth apprentice training
- The agency is Partnering with The Department of Homeland Security (DHS), DOL (Wage and Hour Division (WHD), OSHA, Office of Labor Management Standards (OLMS), and Office of Federal Contract Compliance Programs (OFCCP), OSC, DOJ and EEOC in an IAWG for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. The work group seeks to:
 - ◆ Ensure agencies’ immigration enforcement and worker protection policies, promote workers’ cooperation with labor and employment law enforcement authorities without fear of retaliation;
 - ◆ Ensure federal enforcement authorities are not used by parties seeking to undermine worker protection laws by enmeshing immigration authorities in labor disputes; and,
 - ◆ Ensure the consistent enforcement of federal labor, employment, and immigration laws.
- The Agency has produced a new informational pamphlet, available on the NLRB website in both English and Spanish, titled “Protecting Employee Rights,” which contains an

expanded discussion of an employee's right to engage in concerted activity and other rights under the NLRA.

- The Agency maintains an interactive smart phone app which provides information about employer and employee rights under the NLRA and contact information.

Ethics:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete the annual ethics briefing. Scenarios were provided that demonstrated how well-meaning federal employees could violate government ethics laws and regulations when participating in outside activities, fundraising, and speaking engagements.
- The Ethics Office developed and delivered a Job Aid that covered participation as a member of a Board Directors for a non-federal organization. All employees are required to request permission from their approving official prior to accepting a position on a Board. Approving Officials are directed to consult with the Ethics Office prior to granting approval. A list of information that employees must give to their approving officials is also provided.
- The Ethics Office developed an addendum that is used by all NLRB employees and Presidential Appointees to affirm that by consenting to the recording of a presentation, the NLRB employee or official is not permitting the sponsor to use their official title or likeness to advertise or endorse the final product. This addendum is consistent with the requirement, reinforced by the Office of Government Ethics (OGE) at its latest symposium, that Executive Branch employees take reasonable steps to ensure that a third party does not misuse a

government employee's position to promote their products or events.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations. Throughout FY 2016 the ethics branch:

- Distributed a Speaking Engagements guidance memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- Provided OHR with government ethics information that will be used in the OHR New Hire Orientation presentation.
- Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as "prejudging" a case, and lead to requests for recusal.
- Provided legal ethics guidance regarding Immigration and Candor to the Tribunal in consultation with the Immigration Unit.

Guidance Provided

Measure:	Goal	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%

- During FY 2016, the Ethics Office received 844 inquiries. 737 (83%) were resolved within 5 business days.
 - ◆ The increase in the number of days to provide guidance is directly related to the significant number of cases in a new area; conflicts involving Board of Director positions. The Ethics Office identified and responded immediately to more routine matters within the targeted time frame. In order to respond more quickly to more complex situations, a template was developed in order to create customized responses for the various types of Board of Director positions. 52% of 53 cases involving Board of Directors exceeded the 5 business day benchmark. However, the Ethics Office kept everyone apprised of their progress prioritized according to need.
- All financial disclosure reports filed in FY 2016 were reviewed within 60 days. During this review we confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.

Note: Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

Internal and External Audit Responses:

Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations.

The OCIO and the OCFO responded completely and timely to external information requests including:

- Juniper ScreenOS and Firewall and VPN Server Data Call in Q1
- CISCO vulnerability Data Call in Q2
- Independent Financial Statement Audit

FOIA: Processing Times

Measure:	2016	2015	2014
Respond to initial FOIA requests within 20 working days	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15% of requests	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	32.35 workings days	24 working days	20 working days

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of 32.7 working days for requests received from October 1, 2015 to June 30, 2016. The Agency received 2,682 requests for this period and responded to 982 of those requests in 1-20 days. Thus, 36.6 percent of the FOIA requests were processed within the 20-day statutory time period.
- The Agency sought an extension of time to process a request beyond the 20-day period in about 25.4 percent of the FOIA requests received during the fiscal year.
- The Agency received 23 FOIA Appeals from October 1, 2015 to June 30, 2016. The average elapsed days to process the appeal was 32.35 business days.

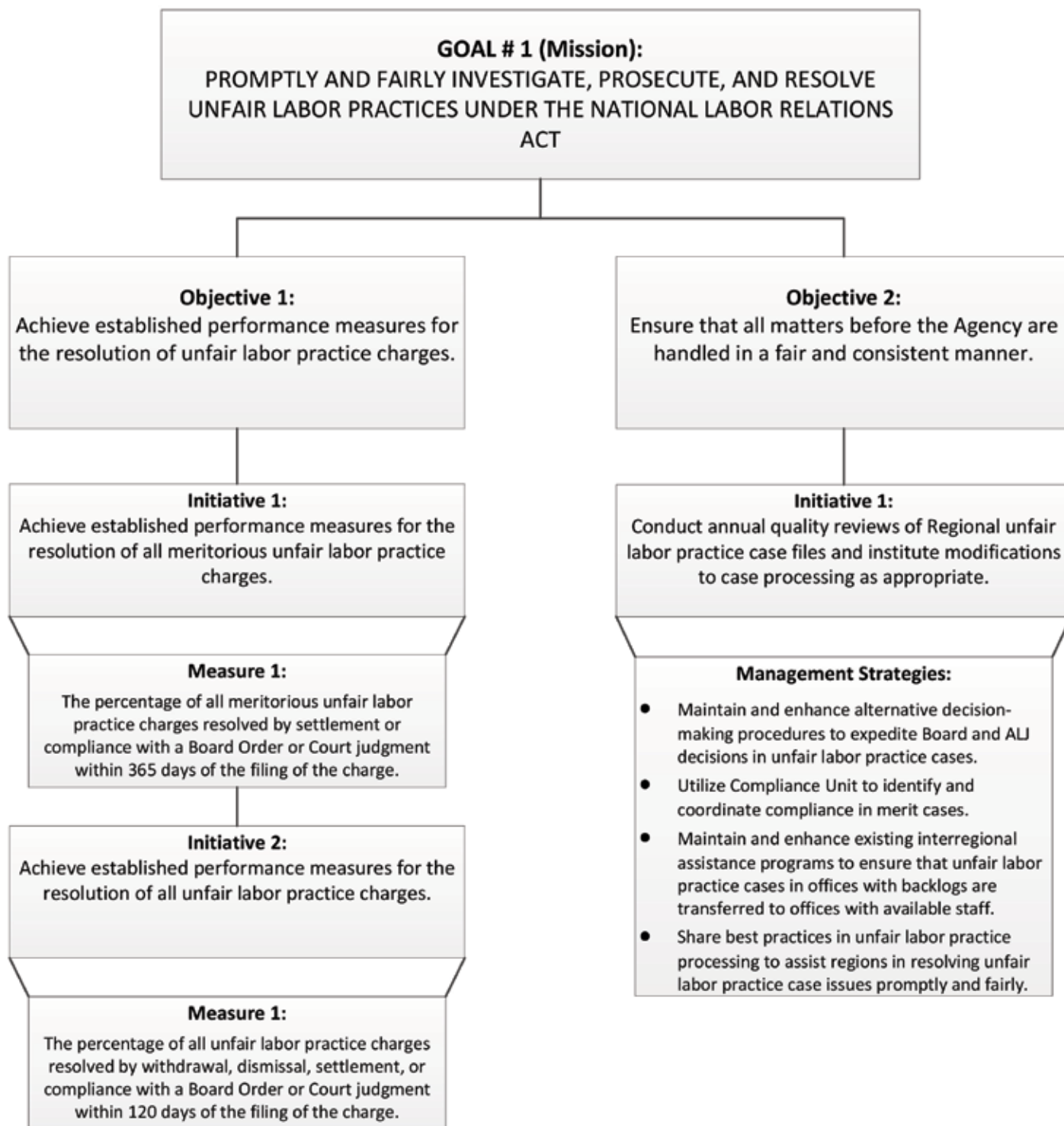
The increase in processing times correlates to the centralization. In 2014 FOIA duties were handled by Headquarters and each Field/

Regional Office by their respective FOIA Points of Contacts (POCs). For uniformity and consistency in FOIA handling, it was decided to centralize FOIA processing and this began at the end of FY 2014 with Headquarters processing, in addition to its own requests, those of Regions 10 and 28. By June of 2015, all FOIA requests were handled at HQ. The consolidation resulted in a very significant increase in the amount of requests handled by Headquarters. In addition, the Branch was dealing with new staff members, who required necessary training

to become proficient in handling requests. There were also difficulties associated with the technology that was available to the Branch. However, the technology has been upgraded and the Branch is currently working with OCIO on making additional improvements to the technology. With the staffing and technology issues well in hand, the Agency anticipates significant improvements in processing times in FY 2017.

APPENDIX D

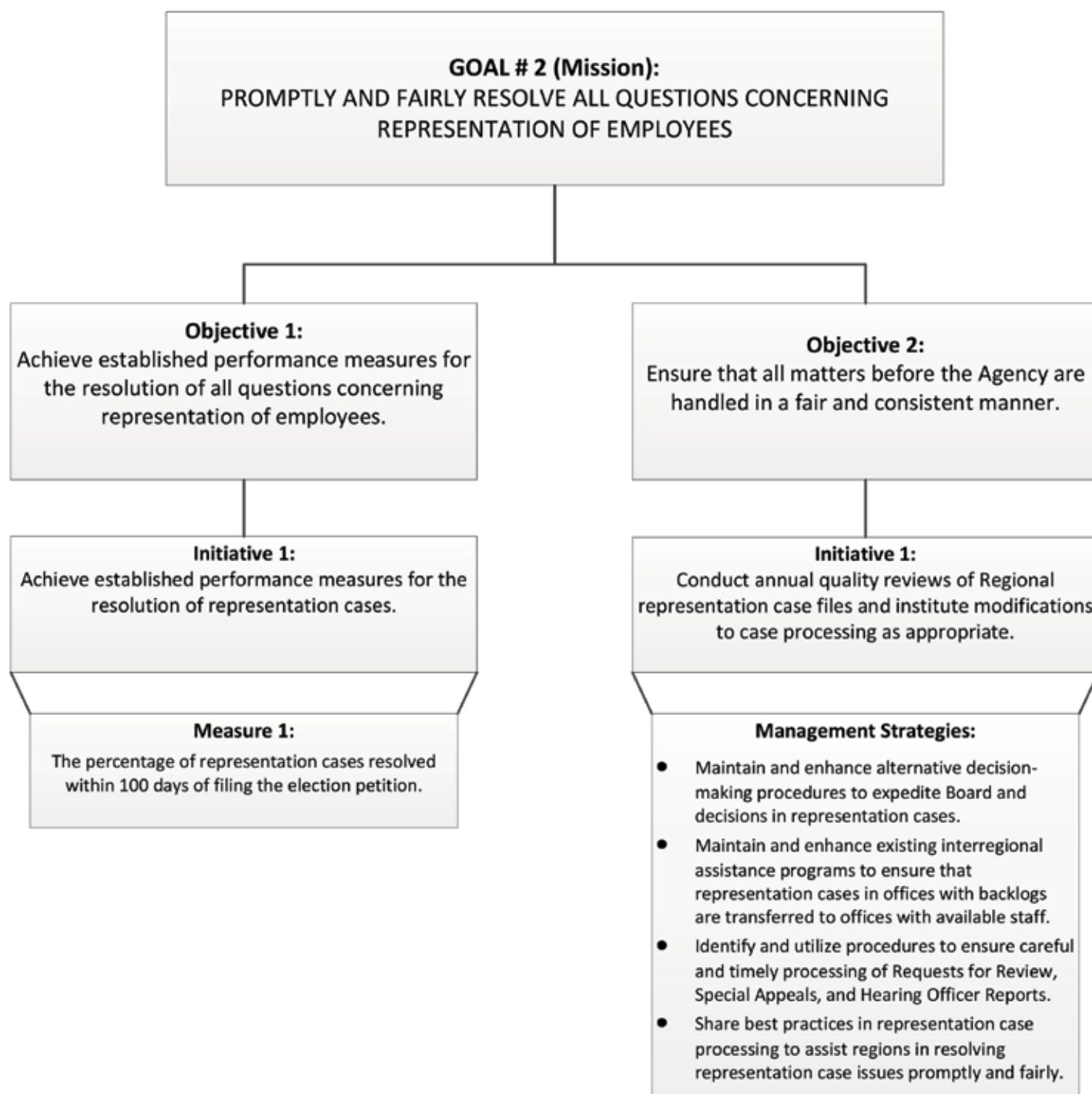
APPENDIX D-1



(Footnotes)

¹ Deputy General Counsel Jennifer A. Abruzzo assumed the role of Acting General Counsel on November 1, 2017.

APPENDIX D-2



APPENDIX D-3

APPENDIX D-3

GOAL # 3 (Support):
ACHIEVE ORGANIZATIONAL EXCELLENCE

Objective 1:

Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish our mission.

Initiative 1:

Invest in and value all employees through professional development, workplace flexibilities, fair treatment, and recognition.

Management Strategies:

- Maintain a current human capital plan that includes human capital goals, objectives and strategies and a workforce plan that is consistent with the Human Capital Assessment and Accountability Framework (HCAAF) of the Office of Personnel Management (OPM).
- Ensure that the Agency's performance management system is results oriented and aligned with the Agency's goals and objectives.
- Demonstrate significant improvement in OPM's assessment of the Agency's performance management system.
- Ensure that managers collaborate with the Agency's employees and unions to implement Agency policies and collective bargaining agreements concerning workplace flexibilities.
- Reduce the number of pending background investigations by 20% each year.
- Enhance employee development and learning opportunities through Skillport, Training Tuesdays, and other blended media.
- Identify, through updating the workforce plan, core competencies for managers and actions necessary to close skill gaps as required by OPM.

Initiative 2:

Develop and implement recruitment strategies to ensure a highly qualified and diverse workforce.

Management Strategies:

- Comply with OPM's hiring reform which tracks time spent to fill vacancies.
- Identify areas in which the Agency can enhance its diversity and talent through annual analysis of MD-715 guidance.
- Attract qualified and diverse applicants, including veterans and persons with disabilities, by following OPM and Equal Employment Opportunity Commission (EEOC) guidance and utilizing best practices of similar agencies.
- Establish working relationships with veterans groups and Veterans Administration and Department of Labor veterans programs to ensure that outreach efforts to veterans are consistent with OPM, congressional and Presidential directives.

Objective 2:

Promote a culture of professionalism, mutual respect, and organizational pride.

Initiative 1:

Improve employee satisfaction and employee engagement.

Management Strategies:

- Improve internal communication.
- Identify and implement strategies to increase the number of employees who respond to the Federal Employee Viewpoint Survey.
- Identify and implement strategies to increase the percentage of Federal employee Viewpoint Survey responders who are satisfied or very satisfied.
- Develop a collaborative program to encourage employee creativity and innovation including redeploying the Agency's suggestion program.
- Utilize internal and external recognition programs to acknowledge employee contributions (for example: Honorary Awards).

Initiative 2:

Ensure that employees are aware of the Agency's mission and how they contribute to its accomplishments.

Management Strategies:

- Review and enhance the employee on boarding program.
- Ensure that each employee is provided with a performance plan and a clear understanding of management's expectations.
- Enhance publicity of significant organizational accomplishments.

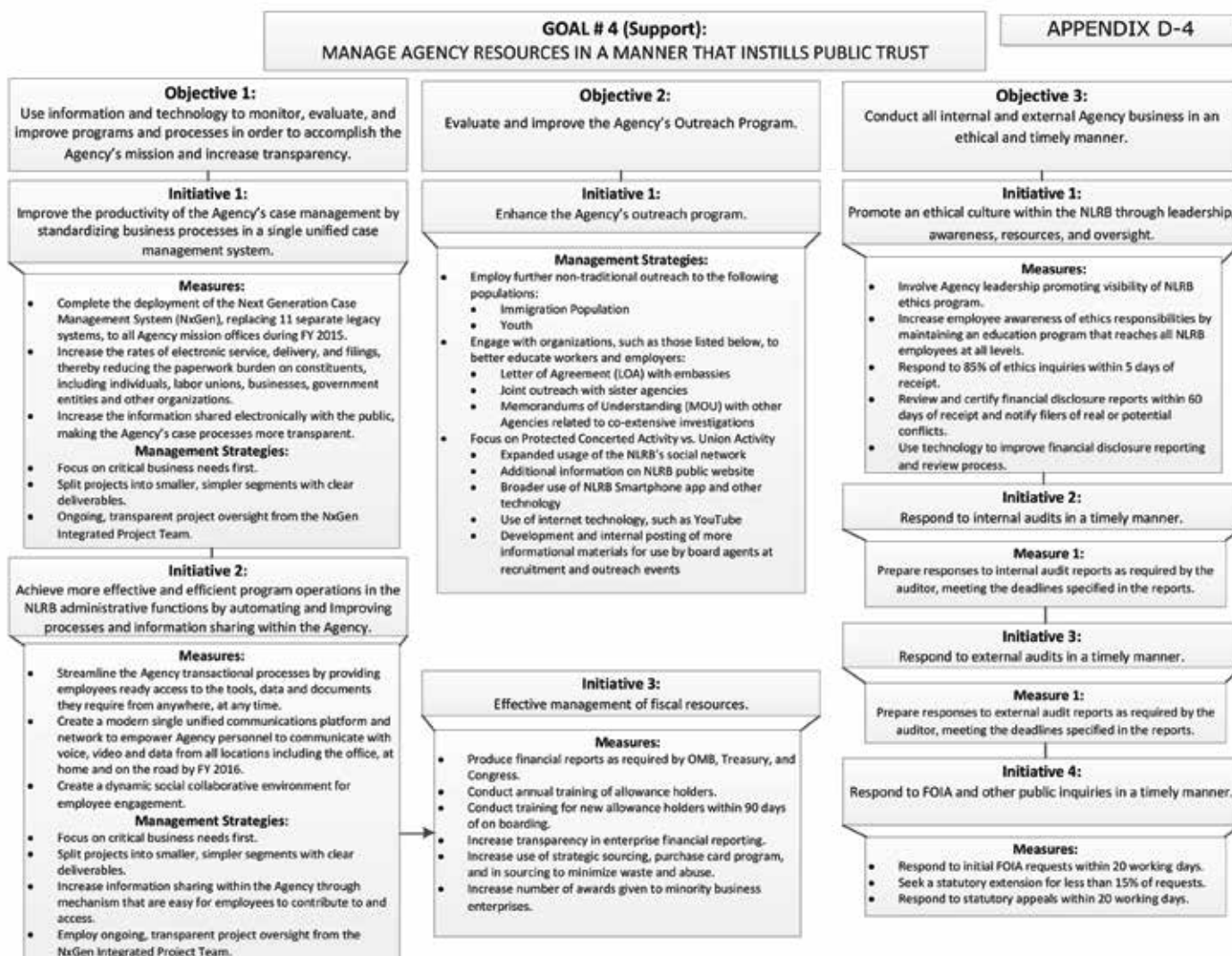
Initiative 3:

Cultivate and promote Agency programs that encourage collaboration, flexibility, diversity and mutual respect to enable individuals to contribute to their full potential.

Management Strategies:

- Demonstrate leadership accountability, commitment, and involvement regarding diversity and inclusion.
- Involve employees as participants and responsible agents of diversity, mutual respect and inclusion.
- Encourage participation in special emphasis observances.

APPENDIX D-4





www.nlrb.gov

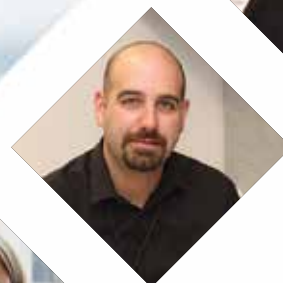
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001



NATIONAL LABOR RELATIONS BOARD

FY2016

PERFORMANCE AND ACCOUNTABILITY REPORT



Protecting Democracy in
the Workplace Since 1935

HOW THIS REPORT IS ORGANIZED

This Performance and Accountability Report (PAR) consists of the following sections

Management's Discussion and Analysis

The Management's Discussion and Analysis (MD&A) Section provides an overview of our mission, organization, mission-related goals, performance and financial and system highlights as well as the National Labor Relations Board's (NLRB's) operational and casehandling highlights for FY 2016. The MD&A also contains an analysis of financial statements and a discussion of compliance with legal and regulatory requirements, such as the Federal Managers' Financial Integrity Act (FMFIA).

Performance

The Performance Section compares the NLRB's performance to its strategic goals as set forth in the FY 2014 to FY 2018 Strategic Plan. The Strategic Plan includes two mission-related goals and two support goals to help achieve the Agency's mission and vision. The performance measures associated with the mission-related goals are outcome-based. The Agency has several outcome-based performance measures for the support goals combined with those that are management strategy driven to ensure alignment with the mission and needs of the customer. This is the third year that the NLRB is reporting its performance under the new goals.

Financial

The Financial Section is composed of the NLRB's financial statements, their related footnotes, and the Independent Auditors' Report.

Other Information

Other Information provides the performance and management challenges identified by the Inspector General in this fiscal year, and the NLRB's summary of audit and management assurances which details the Agency's review of compliance with the Improper Payments Elimination and Recovery Improvement Act (IPERIA). For an update on the Board's progress in addressing management and performance challenges from FY 2015 please see <https://www.nlr.gov/reports-guidance/reports/oig-semiannual-reports>

Appendices

Appendix A lists the acronyms cited throughout this report, Appendix B is a glossary of terms cited throughout this report, Appendix C presents historical performance data and Appendix D represents the complete strategic goal structure.

An electronic version of the NLRB FY 2016 Performance and Accountability Report is available on the NLRB's website at <https://www.nlr.gov/>.

The NLRB's Strategic Plan is also available at this website along with graphs and data which reflect the NLRB's work.

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MESSAGE FROM THE CHAIRMAN

October 13, 2016

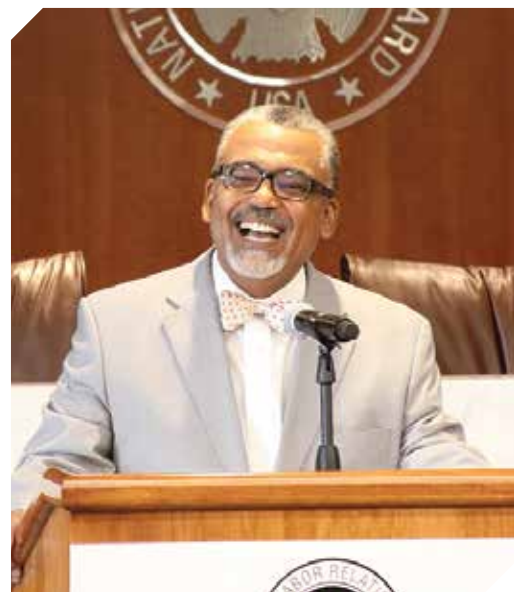


In our fast-paced, ever-changing economy, guaranteeing a seat at the table for all remains critical. The NLRB continues to safeguard this most basic principle of democracy in the workplace. This annual report outlines the Agency's work to protect the rights of workers, promote stability in labor-management relations, and be a good steward of taxpayer funds.

The National Labor Relations Act (NLRA) guarantees the right of private sector workers with or without a union to engage with their employers to improve wages and conditions of employment. The Act affords employers and employees alike with certain protections aimed at encouraging meaningful collective bargaining. It also provides an impartial forum for the resolution of unfair labor practices (ULPs) – the Board.

This Agency takes seriously its duty to effectively enforce the Act and its responsibility to the taxpayers to be careful and efficient in spending public funds.

In FY 2016, the Board issued 335 decisions in contested cases – 295 ULP cases and 40 representation cases.





In the spirit of transparency and open government and in response to requests from the public, the Agency has continued recent efforts to provide timely case information online, making this information more accessible and easier to search. I am pleased with the significant advances the Agency has made in this area.

The Act's protections are meaningful only if workers know their rights and how to assert them. In the same vein, employers and unions must know their obligations and protections. That is why the NLRB continues to expand outreach efforts to worker, labor, and management communities nationwide.

As Chairman, I am pleased to report that management's assessment of risks and review of controls disclosed no material weaknesses and that I have made every effort to verify that the financial and performance data presented in this report is reliable and complete. A more detailed discussion of the Agency's internal controls can be found starting on page 28 of this report.

A handwritten signature in black ink, appearing to read "Mark Gaston Pearce".

Mark Gaston Pearce
Chairman

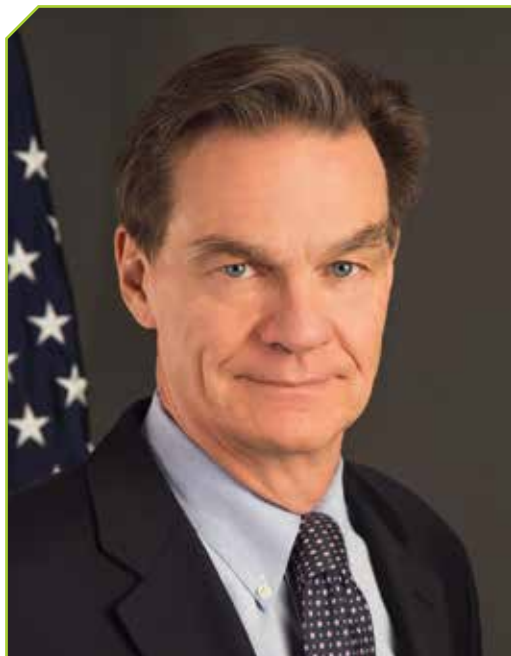
BOARD MEMBERS



From Left to Right: Board Member Philip A. Miscimarra, Chairman Mark Gaston Pearce, and Board Member Lauren McFerran

MESSAGE FROM THE GENERAL COUNSEL

October 13, 2016



More than 5.7 million employers are covered by the National Labor Relations Act (NLRA), which guarantees private-sector workers the right to seek to address their collective workplace concerns. Specifically, with or without union representation, workers have the right to organize, bargain collectively, and participate in activities with one another to improve their pay and working conditions. Our job at the NLRB is to safeguard that right by (1) preventing and remedying ULPs committed by employers and unions, and (2) conducting secret-ballot elections to determine whether or not employees want union representation.

This FY 2016 report outlines the Agency's casehandling, administrative, financial and outreach accomplishments, demonstrates excellent management of resources, and addresses current and future challenges.

CASEHANDLING

As General Counsel, my Office oversees the investigation and prosecution of ULP charges, as well as the processing of representation case petitions filed with our 26 Regional and 23 satellite offices across the nation. I also serve as the Agency's chief administrative officer. Now more than ever it is critical to put and keep the right people in place and give them the right tools to do the job that taxpayers expect and deserve.

I take seriously our duty to ensure that each case filed with the Agency is processed fairly and expeditiously. Our network of field offices is staffed by approximately 1,000 dedicated public servants, who perform effective and efficient casehandling work each and every day. In FY 2016, our case intake was in excess of 23,850 cases, which was a significant increase from the prior fiscal year's total.

The NLRB is charged with protecting workers rights in an ever-changing economy, making it incumbent upon the Agency to comprehensively review evolving employer-employee relationships when cases are brought before us. For that reason, the General Counsel regularly identifies priority issues for centralized consideration via submission to the Division of Advice. This fiscal year, these issues included: whether an employer's permanent replacement of economic strikers had an unlawful motive under *Hot Shoppes*, 146 NLRB 802 (1964); the application of *Purple Communications*, 361 NLRB No. 126 (2014) to electronic systems other than email; make-whole remedies for construction industry applicants or employees who sought or obtained employment as part of an organizing effort; "English-only" policies; the employment status of workers in the on-demand economy; and questions about the misclassification of employees as independent contractors. As new legal issues arise, the Agency will continue to investigate and review cases to ensure that the protections of the NLRA keep pace with changes in the economy. Notably, this fiscal year, the Board agreed with our suggested analysis in a number of priority matters, including: *Miller & Anderson*, involving petitioned-for user and supplier employees in one bargaining unit; *King Soopers*, involving compensation for discriminatees' search-for-work and work-related expenses; *United States Postal Service*, involving Administrative Law Judge's (ALJ's) issuance

of a consent order upon respondent's agreement to less than a full remedy over the objections of Counsel for the General Counsel and the charging party; and *Columbia University*, involving graduate student teaching and research assistants' status as statutory employees.

I am very proud of our field offices' efforts to assist parties in settling short of litigation. Once again, our settlement rate exceeded 90 percent, thereby promoting industrial peace and saving taxpayer dollars. I am equally proud of the field offices' litigation efforts this fiscal year, including in the high-profile and multi-Regional cases involving McDonald's, Wal-Mart, and Community Health Services. Further, in addition to its usual excellent performance in the courts of appeal, our Division of Enforcement Litigation did an admirable job working with the Solicitor General's office to file two petitions for certiorari with the Supreme Court: *S.W. General*, seeking review of the DC Circuit's decision that my predecessor could not legally perform the duties of the Office after his nomination based on its interpretation of the Federal Vacancies Reform Act, and *Murphy Oil*, seeking to have the Court uphold the Board's decision that an employer cannot, as a condition of employment, maintain mandatory arbitration agreements with individual employees that bar them from pursuing work-related litigation on a class or collective basis in any forum, arbitral or judicial.

ADMINISTRATIVE

As reported last fiscal year, the Agency's Headquarters relocated and reduced its footprint by 30 percent garnering significant savings on rent and security. This fiscal year, the Agency took steps to also reduce its footprint in some Regional Offices and plans to continue that effort in FY 2017. Similarly, as reported last year, the Agency took advantage of the Headquarters' relocation to consolidate existing data, voice, video and wireless into one unified communication system. This fiscal year, the Agency expanded that effort to field offices, allowing for remote access, enhanced real-time collaboration, expeditious and paperless communications, and lowering of overall costs. We have also invested in USA Performance, a new performance management reporting system.

FINANCIAL

The Agency fully understands the importance of using its resources efficiently. This fiscal year, the Office of the Chief Financial Officer engaged in a more in-depth level of program review with the organizational units and was able to construct a more specific line item spend plan for regular consideration by me and the Chairman. This process allows for funding transparency and improved, timely execution of transactions. This significantly more detailed engagement is designed to assure that the Agency's financial and performance data is reliable and complete.

OUTREACH

The issues before the Agency are ones that, for decades, have been debated with passion and engendered enormous differences of opinion. As General Counsel, I have made every effort to speak and, more importantly, to listen to the concerns and interests of all parties. From guidance memoranda to speaking engagements, I have sought to assure that we provide access to ample information about casehandling initiatives and procedures, and about legal developments at the Agency.

Educating the public about our statute and our Agency is a priority for me. That is why, during my tenure, the Agency has continued to expand our outreach program. This fiscal year, our social media presence continued to grow and we revamped the front page of the Agency's website to make it easier for individuals to access, in short order, information of interest to them. Further, website enhancements this fiscal year improved e-filing capabilities and on-line FOIA request forms.

We have also engaged in intra- and inter-agency collaborative efforts to better educate and serve the public, and particularly, vulnerable worker populations. For example, our Agency's Cultural Enhancement Program has continued to assist with recruiting and retaining a culturally diverse workforce, able to identify with the populations we serve. This fiscal year, the Agency also developed training materials and a network of

immigration coordinators nationwide to assist with outreach and casehandling matters dealing specifically with immigrant populations. We have also continued to collaborate with the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC) and the Department of Justice (DOJ). One such joint effort – as a part of the White House initiative to reach out to Asian American Pacific Islander (AAPI) communities – has been to engage in listening sessions with AAPI groups and to develop a broad-based worker.gov website that employees can more easily navigate, enabling quick access to agency information specific to their workplace concerns. This fiscal year, the Agency also continued to reach out to foreign embassies/ministries/consulates to promote the education of workers and business owners, and 13 field offices entered into local agreements with Mexican consulates.

CONCLUSION

As General Counsel, I remain committed to an open, fair, and transparent process here at the Agency. I appreciate and encourage constructive relationships with representatives of both management and labor who appear before the Agency. I enjoy working with all of the Agency's extraordinarily able employees to fulfill our mission of protecting workplace rights and providing the highest quality service to the public.

A handwritten signature in black ink, appearing to read "Richard F. Griffin, Jr.", written over a light blue horizontal line.

Richard F. Griffin, Jr.
General Counsel

2016 YEAR IN REVIEW

AGENCY OPERATIONS

General Counsel Memos

The General Counsel issued three memos; two to the field offices and one to both Headquarters and the field offices to provide policy guidance. The three memos are available to the public at: <https://www.nlrb.gov/reports-guidance/general-counsel-memos>

Memorandum GC 16-01: Mandatory Submission to the Division of Advice

This memo outlines the types of cases and issues of particular interest that would benefit from centralized consideration. Not all cases need to be processed with guidance from Headquarters. An outline of cases that should be submitted to the Division of Advice in Headquarters include:

- Matters that involve General Counsel initiatives and/or priority areas of the law and labor policy
- Difficult legal issues that are relatively rare in any individual region and issues where there is no governing precedent or the law is in flux
- Casehandling matters that have traditionally been submitted to the Division of Advice.

For more information about this memo, please see page 40.

Memorandum GC 16-02 (Revised)¹: Report on the Midwinter Meeting of the ABA Practice and Procedure Under the National Labor Relations Act Committee of the Labor and Employment Law Section

The General Counsel attended the Annual Midwinter meeting of the Practice and Procedure Under the NLRA Committee (P&P Committee) of the American Bar Association (ABA) Labor and Employment Law Section with several senior Agency managers. A primary purpose of the meeting is to discuss Committee concerns and to respond to questions about Agency casehandling processes. At the Midwinter meeting, members of the Committee shared their appreciation for the constructive relationships enjoyed by the local P&P groups with individual Regional Offices. The memo encouraged employees to facilitate exchanges where they do not exist and to continue to broaden relationships where they do.

The memo then presented the questions posed to the Agency and the Agency's responses on the following topics:

- ULP Issues: Statistics, Section 10(j) Injunctions, Deferral, Investigative Subpoenas, Access to Information
- GC Memo 15-04: Report of the General Counsel Concerning Employer Rules <https://www.nlrb.gov/reports-guidance/general-counsel-memos>
- *Noel Canning*
- Time Targets
- General Case Processing Issues: Remedies and Representation Cases, including Statistics, Election Rules, and Joint Employer.

Memorandum GC 16-03: Seeking Board Reconsideration of the Levitz Framework

This memo outlines the new procedure that Regions should follow after making a determination to issue complaint alleging that an employer has violated Section 8(a)(5) by unlawfully withdrawing recognition from an

¹ This memorandum was revised to include an additional *Spruce Up* case that was inadvertently omitted from the list.

incumbent union absent objective evidence that the union actually had lost majority support. The procedure includes pleading an alternative theory of violation in the complaint and incorporating model arguments into briefs submitted to ALJs and the Board.

The model argument asks the Board to require that employers utilize board representation procedures to fairly and efficiently determine where their employees' exclusive bargaining representative has lost majority support. The memo outlines the *Levitz Furniture Co.* case and how the framework the Board created to encourage employer use of RM elections, did not yield the results that the Board anticipated and intended. The memo goes on to list reasons as to why the Board should exercise its discretion to modify its standard to hold that, absent an agreement between the parties, an employer may lawfully withdraw recognition from its employees' Section 9(a) representative based only on the results of an RM or RD election.

Compliance Conference

The Agency hosted, at Headquarters, the FY 2016 Compliance Conference for all supervisors, compliance officers and compliance assistants. The theme was Compliance: Making a Difference. Training sessions highlighted the initiative on consequential economic harm and how to address compliance issues involving the Affordable Care Act, Immigration, financial protocols, and 401K and Pension Benefits, along with practical training on online investigative software searches, using the Agency's backpay and excess tax calculators, and working with financial documents. These are just a few of the topics fully discussed at the conference to assist Regional Compliance Teams in achieving remedial relief agreed to in settlements or ordered by an ALJ or the Board or court.

Trial Advocacy Institute

The Agency conducted a Trial Advocacy Institute, attended by 88 field attorneys and 9 Headquarters attorneys. The program utilized small, instructor-intensive group workshops to develop and refine trial skills, including: pretrial preparation, handling subpoena issues, witness preparation, direct and cross-examination, use of documentary evidence, rebuttal testimony, and application of the Federal Rules of Evidence. There were 10 groups. Each had 4 instructors and around 10 student attorneys. Each student attorney was filmed several times during the week while examining a witness in a hypothetical case. After each examination, the instructors in the workshop provided the student attorney immediate feedback. The student attorney and another instructor then reviewed the recording in another room and discussed the examination in more depth. Throughout the course of the week, the program addressed nearly every critical aspect of trial practice, including: preparation, opening statements, direct and cross-examination, examination of adverse witnesses during one's case-in-chief, and handling exhibits. The instructor-intensive group workshops formed the core of the program, supplemented by large group presentations giving examples of opening statements and adverse witness examination, instructor tips on trial practice and strategy, and presentations regarding subpoenaing and managing electronically stored information, the interplay between administrative trials and federal court preliminary injunction proceedings, and legal ethics issues commonly arising in NLRB trial practice.

COLLABORATIVE EFFORTS

The White House Initiative on Asian Americans and Pacific Islanders (WHIAAPI)

The WHIAAPI Vulnerable Workers Project Interagency Working Group (IWG) has been engaging in listening sessions with AAPI communities around the country. The IWG consists of representatives from the DOJ, DOL, EEOC and the NLRB. The initiative works collaboratively with the White House Office of Public Engagement to increase AAPI participation in many programs related to education, commerce, business, health, housing, environment, labor and employment, transportation, immigration and economic and community development.

The Vulnerable Workers Project goals are for federal agencies to: (i) gather information about the specific employment and labor issues that the AAPI workforce encounters in high-risk and low-wage industries; (ii) educate AAPI communities about their federal civil rights and labor protections; and (iii) operationalize the information obtained in the listening sessions into strategic enforcement and policy priorities of the federal agencies.

Agency personnel participated in five White House AAPI-sponsored events at four locations in FY 2016: Glenview IL, Elgin IL, Seattle WA, and San Jose CA. NLRB and other US governmental participants listened to workplace issues that members of the national communities were encountering and provided information about accessing protections under the NLRA and other local, state and federal laws through a panel discussion. Volunteer pro bono attorneys were also present at some of the sessions to provide advice. Many attendees did not speak English, so communications were conducted with simultaneous interpretation.

Workers.gov

In May 2016, the NLRB joined with the DOL, the EEOC, the DOJ, and the Occupational Safety and Health Administration (OSHA) in a partnership to develop a one-stop website to help educate workers on their rights and to put them into contact with the Agency best suited to meet their specific needs. Developed by the Presidential Innovation Fellows (PIF), Workers.gov is a step towards consolidating the labor law knowledge base into a format that is more easily accessible by the public, especially those in vulnerable groups that may be apprehensive about seeking help from agencies or who may have difficulty navigating multiple federal website littered with technical information in order to find information relevant to their issues. The website is centered on the idea that workers do not distinguish between different types of rights they have. Instead they focus on a specific issue that they are having and are seeking answers pertaining to that issue. The website seeks to allow the worker to craft his/her own path by providing information relevant only to the worker's specific field and identified issue. Subsequently, the website provides the worker with access to filing a charge and educates the worker on the process as simply as possible.

The NLRB contributed to the project on an ongoing basis by providing requested data and information and reviewing several iterations of the website. Since the website was to be based around user groups, the Agency provided information regarding customer experiences with the NLRB in addition to violations of the NLRA for



which the workers are seeking guidance. The developers worked with the NLRB's Congressional and Public Affairs Office (CPAO), as well as similar offices at other agencies, to assist with outreach about the website to organizations and individuals who may benefit from its use.

Local Agreements

In FY 2016, 13 NLRB field offices entered into local agreements with area Mexican consulates designed to bolster cooperation and outreach to Mexican communities. The agreements are an outgrowth of the collaboration that has existed for many years between local NLRB offices around the country and the network of Mexican consulates in major American cities. Local agreements have proved helpful as a means by which NLRB agents and consular officials can collaborate to reach out to Mexican workers and business owners to explain their rights and obligations under the Act.

PUBLIC INFORMATION PROGRAM

The Agency's Public Information Program is one of the critical services provided to employers, unions, and employees. Under this program, in addition to the services provided by the CPAO in Headquarters, Board agents in the field offices provide information directly to individuals or entities that contact the Agency seeking assistance. In FY 2016, the Agency's Regional Offices received 61,660 public inquiries regarding workplace issues. In responding to these inquiries, Board agents spend a considerable amount of time explaining the coverage of the NLRA, accepting charges, or referring parties to other federal or state agencies.

The public may also contact the Agency through a toll-free telephone service (1-866-667-NLRB) designed to provide easy and cost-free access to information. Callers hear messages recorded in English and Spanish that provide a general description of the Agency's mission, contact information for other government agencies, and connections to the Regional Offices in closest geographic proximity. In FY 2016, the toll-free telephone service received 34,997 calls.

Public outreach is encouraged and has been embraced at all levels of the Agency. Over the past few years, the Board Members, General Counsels², Regional Managers, and Board agents participated in numerous speaking engagements at events sponsored by law schools, the American Bar Association, the Chamber of Commerce, and various employer, union and worker advocacy groups. Agency representatives also engaged in outreach events involving other federal agencies, business organizations, workers' rights centers, human resources professional groups, and labor organizations to educate them on the NLRA and the role of the NLRB as an impartial enforcement. Further, Regional Offices publish newsletters and participate in televised or radio public talk shows.

As part of the Agency outreach to communities with limited English proficiency, in addition to the bilingual toll-free telephone service for inquiries, the NLRB employs language assistants and contracts with service providers whose job is to provide interpretation and translation services in various languages to assist our field office casehandling. The public website contains Agency publications about the NLRA and its processes, which are translated into Spanish, Chinese, Creole, Korean, Russian, Somali and Vietnamese. The number of electronic document templates available in Spanish continues to increase and the database of translated representation case notices and ballots has expanded to include 31 languages. Also, an Agency film about representation case processing has been recorded for the benefit of the Spanish-speaking community. Finally, the Agency has teamed up with other federal agencies in conducting listening sessions among the Asian American and Pacific Islander community to educate them about the rights of workers and to listen to their concerns regarding treatment at their workplaces and confusion about our processes.

² Including former Acting General Counsel Lafe E. Solomon.

FY 2016 STATISTICAL HIGHLIGHTS

- The Board issued 335 decisions in contested cases³, 295 ULP cases and 40 representation cases.
- 99.1 percent of all initial elections were conducted within 56 days of filing of the petition⁴.
- Initial elections in union representation cases were conducted in a median of 23 days from the filing of the petition.
- Regional Offices issued 1,272 complaints.
- 93 percent of meritorious ULP cases were settled.
- Regional Offices prevailed in 89 percent of Board and ALJ decisions, which were won, in whole or in part.
- \$52,718,775 was recovered on behalf of employees as backpay or reimbursement of fees, dues, and fines, and 1,648 employees were offered reinstatement.
- The Agency received 61,660 inquiries through its Public Information Program, and 34,997 calls through its toll-free number.
- The Division of Judges closed 208 hearings, issued 204 decisions, and achieved 500 settlements in cases on its trial docket.

³ When the Regional Director's decision on a question concerning representation is challenged by one of the parties.

⁴ The performance measure for Goal 2 found on page 27 measures the number of days the petitions filed were processed, and this statistic focuses on cases where an election was directed, stipulated or consented to.

MANAGEMENT'S DISCUSSION AND ANALYSIS

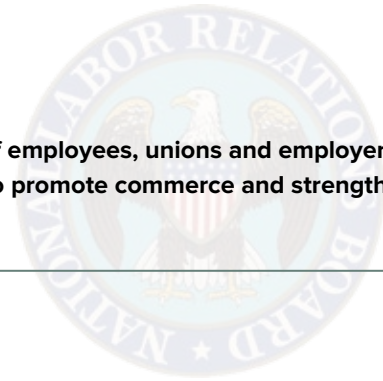


Protecting Democracy in
the Workplace Since 1935

ABOUT THE NLRB

MISSION STATEMENT

Protecting workplace democracy and the rights of employees, unions and employers under the National Labor Relations Act, in order to promote commerce and strengthen the Nation's economy.



THE NATIONAL LABOR RELATIONS ACT

- Basic law governing relations between labor unions and business enterprises engaging in interstate commerce in the private sector
- Purpose – serve the public interest by reducing interruptions in commerce caused by conflict between employers and employees
- Embodies a bill of rights, which establishes freedom of association for purposes of collective bargaining and concerted activities to improve terms and conditions in the workplace
- Addresses the rights and obligations of employees, labor unions, and private employers

THE NATIONAL LABOR RELATIONS BOARD

The NLRB is an independent federal agency created in 1935 to administer and enforce the NLRA by conducting secret-ballot elections among employees to determine whether or not the employees wish to be represented by a union; and by preventing and remedying statutorily defined ULPs by employers and unions.

The NLRB acts only on those cases brought before it and does not initiate cases. All proceedings originate with the filing of charges or petitions by employees, labor unions, private employers, or other private parties.

In its 81-year history, the NLRB has counted millions of votes, investigated hundreds of thousands of charges, and issued thousands of decisions. These numbers tell an important part of the Agency's story. Specific data on the following components of the Agency's work can be found on the NLRB's web site <https://www.nlrb.gov/>:

- Charges and Complaints – Data related to charges of ULPs received by Regional Offices and their disposition over time, including withdrawals, dismissals, complaints, and settlements
- Petitions and Elections – Data related to petitions for representation, decertification, unit amendment and clarification, and rescission of union security agreements received by Regional Offices, elections held, and outcomes
- Decisions – Data related to decisions by the Board and NLRB ALJs
- Litigation – Data related to litigation by Board attorneys in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions
- Remedies – Data related to remedies obtained to resolve ULPs, including backpay and offers of reinstatement

EMPLOYEE RIGHTS UNDER THE NLRA

The NLRA extends rights to many private-sector employees, including the right to organize and to bargain collectively with their employer. Employees covered by the Act are protected from certain types of employer and union misconduct and have the right to support union representation in a workplace where none currently exists or to attempt to improve their wages and working conditions through other group action.

Under the NLRA, employees have the right to:

- Form, or attempt to form, a union among the employees of an employer.
- Join a union whether the union is recognized by the employer or not.
- Assist a union in organizing employees.
- Engage in protected concerted activity. Generally, “protected concerted activity” is group activity that seeks to improve wages or working conditions in a particular workplace.
- Refuse to do any or all of these things. However, the union and employer, in a state where such agreements are permitted, may enter into a lawful union-security clause requiring employees to pay union dues and fees.

The NLRA forbids employers from interfering with, restraining, or coercing employees in the exercise of rights relating to organizing, forming, joining or assisting a labor organization for collective bargaining purposes, engaging in protected concerted activities, or refraining from these activities. Similarly, unions may not restrain or coerce employees in the exercise of these rights.

STATUTORY STRUCTURE

Agency leadership consists of six presidential appointees – five Board Members (including the Chairman) and the General Counsel. Day-to-day management of the Agency is divided by law, delegation, and Agency practice between the Chairman, the Board, and the General Counsel. The Board and the General Counsel maintain a Headquarters in Washington, D.C., and the Agency also maintains a network of Regional⁵ (“Field”) offices and two satellite Judges’ offices. The NLRA assigns separate and independent responsibilities to the Board and the General Counsel. The General Counsel’s role is chiefly prosecutorial and the Board’s is adjudicative. A map depicting the Regional Offices can be found at: <https://www.nlr.gov/who-we-are/regional-offices>

⁵ Including Subregional and Resident Offices.

THE FIVE-MEMBER BOARD

The five-member Board primarily acts as a quasi-judicial body, deciding cases on the basis of formal records in administrative proceedings. Board Members are appointed by the President with the advice and consent of the Senate, and serve staggered five-year terms.⁶ The President designates one of the Board Members as Chairman. Board Member Mark Gaston Pearce was designated Chairman on August 28, 2011, and again on August 2, 2013.

⁶ Even though Board Members have five-year-terms, a new five-year term begins running immediately upon the expiration of the previous Member’s term and the seat remains vacant until an individual is nominated and confirmed by the Senate. Therefore, a significant lapse of time could occur between when a term expires and a new Board Member is confirmed, which means that a new Board Member might serve only a portion of a five-year term.

Since the term of Board Member Hirozawa expired in August, the Agency currently has three Board Members.

THE GENERAL COUNSEL

Congress created the position of General Counsel in its current form in the Taft-Hartley Act of 1947. The General Counsel is appointed by the President to a four-year term, with Senate consent, and is responsible for the investigation and prosecution of ULP cases and for the general supervision of the NLRB Regional Offices, as well as of the administrative, financial and

human capital operations of the Agency. In performing delegated functions, and in some aspects statutorily assigned functions, the General Counsel acts on behalf of the Board.

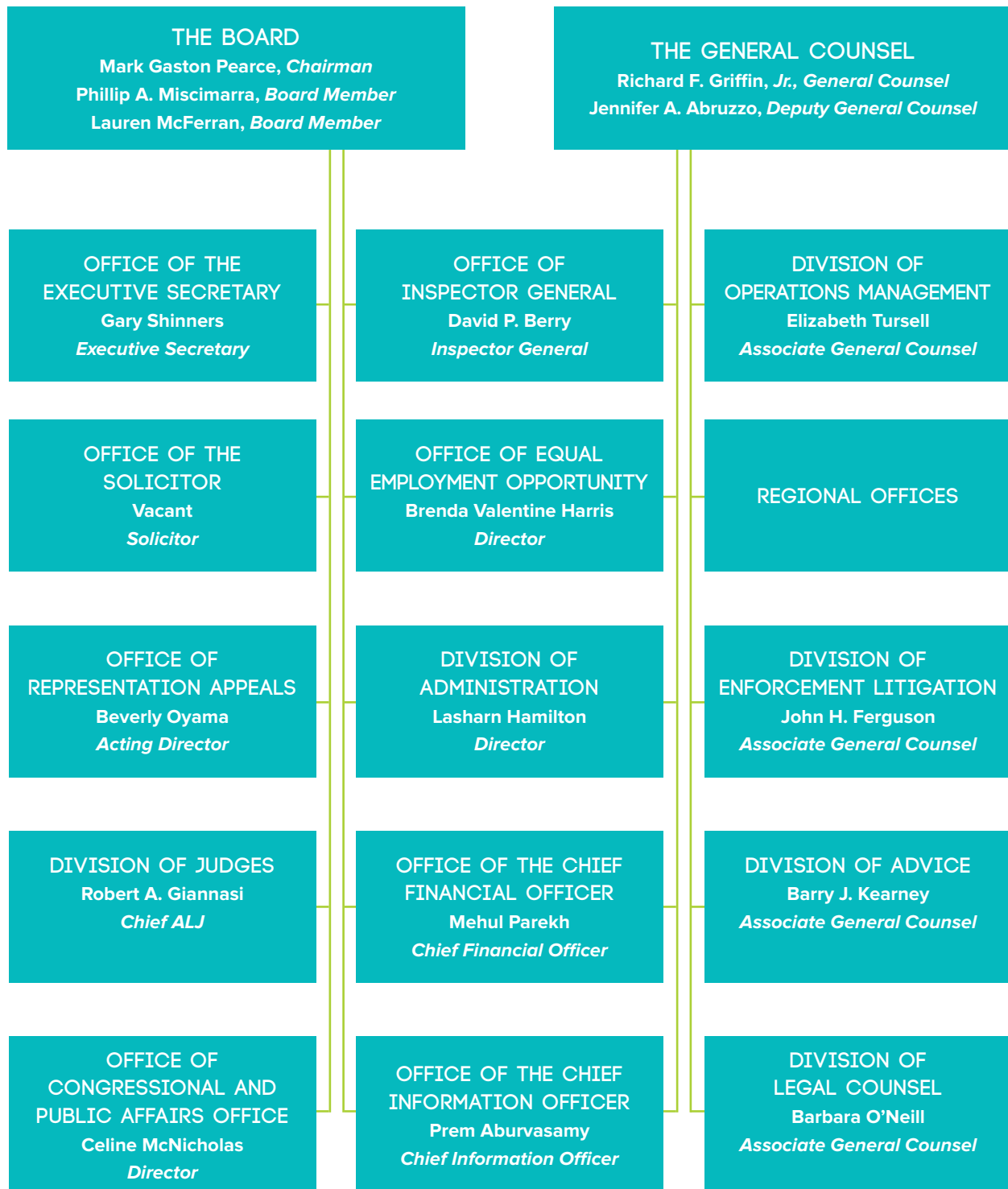
However, with respect to the investigation and prosecution of ULP cases, the General Counsel has sole prosecutorial authority under the statute, independent of the Board. Richard F. Griffin, Jr., was nominated by the President for General Counsel and appointed to a full four-year term on November 1, 2013.

Below is information about the terms of the current Presidential appointees of the NLRB.

	Sworn In	Term to Expire
Mark Gaston Pearce Chairman	4/7/2010	8/27/2018
Philip A. Miscimarra Member	8/7/2013	12/16/2017
Lauren McFerran Member	12/17/2014	12/16/2019
Richard F. Griffin, Jr. General Counsel	11/4/2013	10/31/2017



ORGANIZATION



CASEHANDLING FUNCTIONS

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice on union representation and by preventing and remedying statutorily defined ULPs. The NLRB maintains a customer-focused and a results-oriented philosophy to best serve the needs of the American people.

The primary function of the NLRB is the effective and efficient resolution of charges and petitions filed voluntarily under the NLRA by individuals, employers, or unions. In carrying out the NLRA's mandates, the NLRB supports the collective bargaining process and seeks to eliminate certain ULPs on the part of employers and unions so as to promote commerce and strengthen the Nation's economy.

The two mission-related goals of the NLRB are:

- Promptly and fairly investigate, prosecute, and resolve ULPs under the NLRA
- Promptly and fairly resolve all questions concerning representation of employees

UNFAIR LABOR PRACTICE PROCEEDINGS

The NLRA contains a code of conduct for employers and unions, and regulates that conduct in ULP proceedings which are remedied through adjudicatory procedures under the NLRA.

The General Counsel has sole responsibility— independent of the Board—to investigate charges of ULPs, and to decide whether to issue complaints with respect to such charges. The Board, in turn, acts independently of the General Counsel in deciding ULP cases.

The General Counsel investigates ULP charges through the Agency's network of Regional, Subregional, and Resident Offices (field offices). If there is reason to believe that a ULP charge has merit, the Regional Director, on behalf of the General Counsel, issues and prosecutes a complaint against the charged party, unless a settlement is reached. With some exceptions, a complaint that is not settled or withdrawn is tried before an administrative law judge, who issues a decision. The decision may be appealed by any party to the Board through the filing



of exceptions. The Board decides cases on the basis of the formal trial record, according to the statute and the body of case law that has been developed by the Board and the federal courts.

If the Board finds that a violation of the Act has been committed, the role of the General Counsel thereafter is to act on behalf of the Board to obtain compliance with the Board's order remedying the violation. Although Board decisions and orders in ULP cases are final and binding with respect to the General Counsel, they are not self-enforcing. The statute provides that any party may seek review of the Board's decision in a United States Court of Appeals. In addition, if a party refuses to comply with a Board decision, the Board itself must petition for court enforcement of its order. In court proceedings to review or enforce Board decisions, the General Counsel represents the Board and acts as its attorney. Also, the General Counsel acts as the Board's attorney in contempt proceedings and when the Board seeks injunctive relief under Sections 10(e) and (f) of the NLRA after the entry of a Board order and pending enforcement or review of proceedings in circuit court.

Section 10(j) of the NLRA empowers the NLRB to petition a federal district court for an injunction to temporarily prevent ULPs by employers or unions and to restore the status quo, pending full review of the case by the Board. In enacting this provision, Congress was concerned that delays inherent in the administrative processing of ULP charges, in certain instances, would frustrate the Act's remedial objectives. In determining whether the use of Section 10(j) is appropriate in a particular case, the principal question is whether injunctive relief is necessary to preserve the Board's ability to effectively remedy the ULP alleged, and whether the alleged violator would otherwise reap the benefits of its violation.

Under NLRB procedures, after deciding to issue a ULP complaint, the General Counsel may request authorization from the Board to seek injunctive relief. The Board votes on the General Counsel's request and, if a majority votes to authorize injunctive proceedings, the General Counsel, through his Regional staff, files for injunctive relief with an appropriate federal district court.

In addition, under Section 10(l) of the Act, when a Region's investigation of a charge yields reasonable cause to believe that a union has committed certain specified ULPs, such as a work stoppage or picketing with an unlawful secondary objective, the Regional Director is required, on behalf of the Board, to seek an injunction from a federal district court to halt the alleged unlawful activity.

REPRESENTATION PROCEEDINGS

In contrast to ULP proceedings, representation proceedings conducted pursuant to the Act are not adversarial⁷. Representation proceedings involve investigating questions concerning employee representation. Representation cases are initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer. Typically the petitioner requests an election to determine whether a union has the support of a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency in such cases is to investigate the petition and conduct a secret-ballot election, if appropriate, addressing challenges and objections to the election subsequently, and thereafter issuing a certification.

In the processing of representation cases, the Board and the General Counsel have shared responsibilities. The Regional Offices, which are under the day-to-day supervision of the General Counsel, process representation petitions and conduct elections on behalf of the Board based on a delegation of authority made in 1961. As a result, the General Counsel and the Board have historically worked together in developing procedures for the conduct of representation proceedings. The Board has ultimate authority to determine matters, such as the appropriateness of the bargaining unit, and to rule on any challenges and objections to the conduct of an election. The Regional Directors have been delegated authority to render initial decisions in representation matters, which may be subject to Board review.

⁷ Unlike ULP hearings where violations of the statute are litigated in an adversarial proceeding, representation case hearings are fact-finding proceedings regarding questions concerning representation.



COMPLIANCE PROCEEDINGS

In order to obtain compliance with the Board's orders and settlement agreements, the General Counsel's staff must follow up to ensure that the results of the processes discussed above are enforced. NLRB staff deals with employees whose rights have been violated to calculate backpay, and works with respondents regarding notice postings, reinstatement of workers, disciplinary record expungement, backpay, withdrawal of unlawful rules or policies, and other remedies. Since Board orders are not self-enforcing, noncompliance or disputes on findings may require additional hearings or actions in the courts.

ADMINISTRATIVE FUNCTIONS

Section 3(d) of the Act assigns the General Counsel supervision over all attorneys employed by the Agency, with the exception of the ALJs, the Solicitor, the Executive Secretary and the attorneys who serve as counsel to the Board Members. The Board has also delegated to the General Counsel general supervision over the administrative, financial and personnel functions of the Agency.

CASEHANDLING HIGHLIGHTS

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees free choice on union representation and by preventing and remedying statutorily defined ULPs. The NLRB maintains a citizen-centered and a results-oriented philosophy to best serve the needs of the American people.

The NLRB acts only on those cases brought before it and does not initiate cases. While charges must be filed with the Agency to begin an investigation, if merit is found to the charge allegations, the Regional Director has delegated authority from the General Counsel to issue complaint, absent settlement.

All proceedings originate with the filing of charges or petitions by employees, labor unions, or private employers engaged in interstate commerce. During fiscal year 2016, the public filed 21,326 ULP charges of which 37.1 percent were found to have merit. Also, in FY 2016, the NLRB received 2,537 representation petitions, including 2,387 petitions to conduct secret-ballot elections in which workers in appropriate units select or reject unions to represent them in collective bargaining with their employers (RC, RD, and RM), as well as 50 petitions for elections in which workers voted on whether to rescind existing union-security agreements (UD). The NLRB didn't receive any petitions seeking amendment (AC), and received 92 petitions seeking clarification of an existing bargaining unit (UC), as well as 8 Wage and Hour (WH) cases.

The NLRB strives to create a positive labor-management environment for the nation's employees, unions, and employers by assuring employees' free choice on union representation and by preventing

and remedying statutorily defined ULPs. The NLRB maintains a citizen-centered and results-oriented philosophy to best serve the needs of the American people.

The following cases highlight this philosophy and reflect the NLRB's mission of protecting democracy in the workplace:

King Soopers, Inc., 27-CA-129598

The issue in this case is how the Board should handle compensation for employees who were unlawfully fired and who incurred expenses in connection with seeking a new job. Under Board precedent, discharged employees have a duty to look for new work, but previously received no compensation for their related expenses if they failed to find a job or if they earned less in their new job than their total search-for-work and interim employment expenses.

The Board majority in *King Soopers* held that this result is inconsistent with the goal of fully compensating unlawfully fired employees for their losses, and revised its standard make-whole remedy. Going forward, fired workers whose search-for-work and interim employment expenses exceed their interim earnings will be able to be fully reimbursed for those expenses.

Historical Casehandling Data

Case Type	2012	2013	2014	2015	2016
Unfair Labor Practices Charges Filed	21,629	21,394	20,415	20,199	21,326
Unfair Labor Practices Merit Factor	36.4%	35.2%	36.5%	37.8%	37.1%
Representation Case Intake	2,646	2,652	2,677	2,822	2,537
RC, RD, and RM	2,484	2,507	2,512	2,666	2,387
UD	79	69	72	57	50
AC	14	6	11	7	0
UC	69	63	74	83	92
WH	9	7	8	9	8

Columbia University, 02-RC-143012

A Board majority determined in *Columbia University* that student assistants working at private colleges and universities are statutory employees covered by the NLRA.

The Union filed an election petition seeking to represent both graduate and undergraduate teaching assistants, along with graduate and departmental research assistants at *Columbia University* in December 2014. The Regional Director dismissed the petition based on a 2004 Board decision, *Brown University*, which held that student teaching assistants were not statutory employees.

Overruling *Brown University*, the Board majority found that the Act's definition of "employee" is broad, that the student assistants working at the direction of the University had an employment relationship, and that permitting the student assistants to choose whether they desire union representation furthers the Act's goal of encouraging collective bargaining.

Miller & Anderson, Inc., 04-RC-079249

The issue in this case is how to treat a bargaining unit consisting of employees who are solely employed by one employer and employees who are jointly employed by that employer and one or more other employers.

The Union filed a petition to represent employees in a unit consisting of both jointly employed and solely employed employees of a single user employer. The Regional Director dismissed the petition based on the fact that neither the supplier employer nor the user employer consented to the combined unit as required by *Oakwood Care Center*, 343 NLRB 659 (2004).

The Board found merit to the Petitioner's request for review and overruled *Oakwood*, returning to the holding of *M.B. Sturgis, Inc.*, 331 NLRB 1298 (2000), where the Board held that employer consent is not required in units that combine jointly and solely employed employees of a single user and that, in such units, the Board will apply the traditional community of interest factors to decide if such units are appropriate. The majority reasoned that *Sturgis* is consistent with Section 9(b) of the Act, and that it effectuates fundamental policies of the Act that *Oakwood* frustrates.

Loomis Armored US, Inc., 32-CA-025316 et al.

This case addresses the circumstances under which an employer can withdraw recognition from a "mixed-guard" union (a union that has both security guards and non-guards as members) after it has voluntarily recognized the union as the unit's bargaining representative. Here, the Employer, relying on the Board's decision in *Wells Fargo Corp.*, 270 NLRB 787 (1984), withdrew recognition from four unions following the expiration of the parties' collective-bargaining agreements without any showing of actual loss of majority support for the unions.

In this case, the Board overruled *Wells Fargo Corp.*, finding that requiring an employer of guards (like other employers covered by the Act) to show loss of majority support before withdrawing the recognition it had previously chosen to give to a mixed-guard union is more in keeping with the Act's goals of promoting stable bargaining relationships and protecting employees' right to their choice of representation while still preserving the employer's right initially to withhold such recognition where the employer perceives a potential conflict of interest between guard and non-guard employees. However, because of decades-old precedent relied on by the employer that permitted withdrawal of recognition, the Board decided not to apply its decision to pending cases and accordingly dismissed the complaint in this case.

American Baptist Homes of the West, d/b/a Piedmont Gardens, 32-CA-025247 et al.

A Board majority found in this case that the Employer violated Section 8(a)(3) and (f) of the Act by permanently replacing striking employees. Applying the rule set forth in *Hot Shoppes*, the majority held that the General Counsel is not required to show that an employer was motivated by an unlawful purpose extrinsic to the strike, but only that the hiring of permanent replacements was motivated by a purpose prohibited by the Act. The majority then determined that the Employer's stated reasons for permanently replacing workers, which was to punish the strikers and the Union and to avoid future strikes, both constituted evidence of an "independent unlawful purpose."

Guardsmark, LLC, 05-RC-143199

Following a mail-ballot election, the Employer alleged that it was improperly prohibited from holding a mass campaign meeting on the morning ballots

were scheduled to be mailed. The Regional Director recommended that this objection be overruled and a Board majority agreed. In so doing, the Board overruled *Oregon Washington Telephone*, 123 NLRB 339 (1959), which held that the mass-meeting prohibition begins when the ballots are scheduled to be mailed by the Regional Director. The Board majority found instead that prohibiting captive-audience speeches by parties within the 24-hour period prior to the mailing of the ballots more closely aligns the mail-ballot rule with the manual-ballot rule established in *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953), which prohibit such speeches within the 24-hour period prior to the start of a manual election.

Whole Foods Market, Inc., 01-CA-096965 et al.

Reversing the administrative law judge, a Board majority found that the Employer violated Section 8(a)(1) by maintaining two rules prohibiting employee recording in the workplace without prior approval by management. The Board found that the rules, which unqualifiedly prohibit all workplace recordings, were overbroad and would reasonably be construed by employees to prohibit activity protected by the Act.

SolarCity Corp., 32-CA-128085

This case involves an employer's maintenance and enforcement of an agreement that required its employees to waive their rights to maintain class or collective actions in all forums, arbitral or judicial. Affirming the administrative law judge's application of *D. R. Horton, Inc.*, 357 NLRB No. 184 (2012), and *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014), the Board found that both the maintenance and the enforcement of the policy at issue violated Section 8(a)(1) of the Act.

Deciding the issue for the first time, a Board majority rejected the Respondent's argument that the agreements in this case are lawful because, unlike those in *D. R. Horton* and *Murphy Oil*, they contain an exception permitting employees to file employment claims or charges with federal administrative agencies, such as the EEOC, DOL and the NLRB, thereby providing employees an adequate forum to pursue class or collective employment claims. The majority explained that the exception in the Agreements that permits the filing of claims or charges with administrative agencies does not satisfy the requirement of an alternative judicial forum under *D. R. Horton* and *Murphy Oil* because: (1) there is a wide range of employment-related claims

that are not within the purview of any administrative agency; (2) even if the administrative agency has the authority to pursue employees' claims, it typically also has the discretion to decline to do so—thus, access to the agency is not access to a forum for adjudication; and (3) unlike a court, administrative agencies like the EEOC and DOL cannot adjudicate employment-related claims.

NLRB v. SW General, Inc., dba Southwest Ambulance (S.Ct. No. 15-1251)

On April 6, 2016, the Board filed with the Supreme Court a petition for certiorari seeking to reverse a ruling of the United States Court of Appeals for the District of Columbia Circuit denying enforcement of the Board's order on the ground that, under the Federal Vacancy Reform Act, the Board's Acting General Counsel could not legally perform the duties of the office at the time the complaint was issued and prosecuted because he had been nominated by the President to fill the office on a permanent basis. The Court has granted the petition and scheduled oral argument for November 7, 2016.

NLRB v. Murphy Oil USA, Inc., et al. (S.Ct. No. 16-307)

On September 9, 2016, the Board filed with the Supreme Court a petition for certiorari to review a decision of the United States Court of Appeals for the Fifth Circuit. The Board seeks to have the Court uphold the Board's rule, first announced in *D.R. Horton, Inc.*, 357 N.L.R.B. 2277 (2012), *enforcement denied in part*, 737 F.3d 344 (5th Cir. 2013), that an employer violates Section 8(a)(1) of the Act by maintaining arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum, arbitral or judicial, because such agreements limit the employees' right under the Act to engage in concerted litigation. Contrary to the position of the employer and the Fifth Circuit below, the Board has found that such agreements are not shielded from NLRA liability by the Federal Arbitration Act (FAA), because their illegality under the NLRA renders them unenforceable under the saving clause of the FAA. The Second, Fifth, and Eighth Circuits have rejected the Board's position, whereas the Seventh and Ninth Circuits have agreed with the Board. Private-party petitions seeking review of decisions from Second, Seventh, and Ninth Circuits are also pending in the Supreme Court. Although the Board was not a party in any of those cases, it participated as *amicus curiae* (friend of the court) in each.

PERFORMANCE HIGHLIGHTS

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives from the Board and the General Counsel work together in developing the comprehensive Strategic Plan and the Performance and Accountability Report. The NLRB's Strategic Plan was updated in FY 2014 and covers FY 2014 to FY 2018.

The NLRB's Strategic Plan states the Agency's strategic goals, objectives, initiatives, performance measures, and management strategies. There are two mission-related goals, and two support goals. The majority of the support goals are management strategy based and will be discussed at length in the Performance Section of this report.

The NLRB's performance measurement system has been highly regarded for decades and modeled by other agencies to track case processing times. Most of the data collected tracks the time spent at each step of the case processing "pipeline." The Agency does not rely on any outside sources for the data used in its performance management system. Each NLRB office is responsible for collecting and verifying performance measurement data. All of the NLRB's mission-related offices have fully integrated to the NxGen system, which allows for real-time review of all case file materials and for consistent data reporting.

The mission-related goals are compiled using the Agency's NxGen Case Management system. This is an enterprise-wide database used by all divisions of Agency. Each division, including Headquarters and Regions, has data integrity reports which help isolate data errors. The Division of Operations-Management oversees the Regional offices which

compile 75 percent of the case-related statistics. Every quarter, Regions are required to run various data integrity reports in NxGen and report their findings to the Division of Operations- Management for review. For more information on the program evaluation please see page 55.

The NLRB's mission-related goals represent the core functions of the Agency in its enforcement of the NLRA. Rather than focus on the individual segments of the casehandling process, the performance measures for these goals focus on the time it takes to process an entire case, from start to finish. They are outcome-based and align with the mission of the NLRB. The NLRB tracks the total time taken to accomplish the following: the processing of all ULP charges; the resolution of those ULP charges found to have merit; and the resolution of all questions concerning representation.

The Performance Measures for Strategic Goal 1 address the timely resolution of ULP cases, including time spent on the case by Field and Headquarters Offices. On an annual basis, there are typically more than six times as many ULP cases than representation cases. Both types of cases often involve complicated issues for Regions to address.

The Performance measure for Strategic Goal 2 focuses on the time taken to resolve a representation case, from beginning to end, including time spent on the case by Field and Headquarters Offices. In representation cases, elections result from petitions filed by unions, employees, or employers seeking a secret ballot determination as to whether a majority of employees support union representation.

STRATEGIC GOAL 1 (MISSION)

Promptly and fairly investigate, prosecute, and resolve unfair labor practices under the National Labor Relations Act.

Performance Measure

The percentage of meritorious ULP charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

Performance Measure

The percentage of all ULP charges resolved by withdrawal, dismissal, settlement or compliance with a Board order or Court judgment within 120 days of the filing of the charge.

STRATEGIC GOAL 2 (MISSION)

Promptly and fairly resolve all questions concerning representation of employees.

Performance Measure

The percentage of representation cases resolved within 100 days of filing of the election petition.

GOAL 1 PERFORMANCE MEASURE:

The percentage of all meritorious ULP charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

Year	Annual Goal	Actual Performance
FY 2014	82.5%	83.9%
FY 2015	82.5%	80.4%
FY 2016	82.6%	82.7%
FY 2017	82.7%	
FY 2018	82.8%	

GOAL 1 PERFORMANCE MEASURE:

The percentage of all ULP charges resolved by withdrawal, dismissal, settlement or compliance with a Board order or Court judgment within 120 days of the filing of the charge.

Year	Annual Goal	Actual Performance
FY 2014	72.3%	72.3%
FY 2015	72.3%	70.6%
FY 2016	72.4%	70.8%
FY 2017	72.4%	
FY2018	72.5%	

GOAL 2 PERFORMANCE MEASURE:

The percentage of representation cases resolved within 100 days of filing the election petition.

Year	Annual Goal	Actual Performance
FY 2014	85.3%	88.1%
FY 2015	85.4%	87.1%
FY 2016	85.5%	87.6%
FY 2017	85.7%	
FY2018	85.8%	

FINANCIAL AND SYSTEMS HIGHLIGHTS

OPERATIONAL/PERFORMANCE HIGHLIGHTS

The Office of the Chief Financial Officer (OCFO), comprised of the Budget, Acquisition Management and Finance Branches, reports directly to the Chairman and General Counsel. This structure integrates and enhances Agency financial management. Specifically, the OCFO focuses on effectiveness and efficiency in financial operations, reliability of financial reporting, transparency of financial data, and compliance with applicable laws and regulations.

The OCFO continuously seeks to infuse more discipline, structure, and internal control in the financial management lifecycle and throughout the financial management process. Upon an assessment of the operational needs of the Agency, the NLRB took action to develop initiatives in order to gain operational and financial efficiencies. In FY 2016, the OCFO initiated an effort to review all existing OCFO policies in order to update them to ensure they comply with current laws and regulations.

POLICY REVIEW PROGRAM

Purchase Card Policy

The OCFO revised its purchase card policy to ensure a system of internal controls was in place to minimize the potential for fraud and misuse. The policy provides detailed processes and procedures by which purchase card holders can gain efficiencies when procuring items below the micro-purchase threshold. The result of this action significantly improved the Agency's compliance with the Federal Acquisition Regulation (FAR), OMB Circular A-123: Appendix B, the Government Charge Card Abuse Prevention Act of 2012, and the General Services Administration (GSA) SmartPay Program for purchase card use. The policy was implemented October 1, 2016.

Travel Policy

The OCFO has drafted revised travel policies including local, temporary duty, relocations and travel cards. These policies will be published during FY 2017 and will comply with the Federal Travel Regulations (FTR) and the Government Charge Card Abuse Prevention Act of 2012, and will include detailed scenarios to serve as examples for employees with travel questions.

Capitalized Property Policy

The OCFO is collaborating with the Agency Office of the Chief Information Officer and Facilities and Property Branch to codify existing informal procedures around capitalized property. The new policy is in the process of being drafted and when published in FY 2017, will include the procedures for disposal of assets and the definition of roles and responsibilities for property custodians.

Budget Formulation and Execution

The Agency continues to review and refine policies and procedures established in 2010. The initial preparation of the Agency's budget begins 18 months in advance of the budget year. This process includes the development of a preliminary workload estimate for all program areas. The Board and General Counsel use this estimate as a basis to make policy determinations for program objectives and funding requirements. The Budget Office provides the Chairman and General Counsel with the proposed spending amounts by budget line item, some of which may have changed due to adjustments with changing priorities, inflation, and contracting rates. This process provides internal controls to support the administrative control of funds and allows the orderly execution of funding by quarterly apportionments from the Treasury and OMB. The OCFO is currently documenting budgetary procedures that will outline the formulation and execution of processes to provide clear guidance to the Agency.



Additionally the OCFO implemented the following programs to enhance operational efficiencies:

Bulk Ordering: The OCFO initiated the bulk purchasing program for routine paper and toner requirements across the Agency in March of 2016. The program allows for better coordination, distribution and cost-savings of common required items. Bulk orders were placed in April, June and August. On-time ordering and delivery, direct shipment and volume discounts make this program a real success for all parties involved.

GPO Express: The OCFO spearheaded a partnership between the NLRB and the Government Publishing Office (GPO) to implement the GPOExpress Program at the Agency. The result of establishing this program provided the NLRB with deep discounts on mission-critical printing, copying, and binding requirements. The Agency benefited with thousands of dollars in savings by utilizing GPOExpress.

SYSTEMS

The NLRB obtains the majority of its financial systems and services from the Department of the Interior's Interior Business Center (IBC) and has no plans to operate its own financial systems. NLRB is responsible for overseeing IBC and ensuring that financial systems and internal controls are in place to fulfill legislated and regulatory financial management requirements. IBC provides the following systems:

- Oracle Federal Financials – Integrated system of record for all financial transactions.
- Federal Payroll and Personnel System (FPPS) – Personnel system of record, which interfaces with the Oracle system.
- E2Solutions – eTravel system provided by CWTSato (Carlson Wagonlit), the NLRB's Travel Management Service, which also interfaces with the Oracle system.

During FY 2016, the Agency introduced the following modernized systems to improve operational efficiencies:

FINANCIAL SYSTEMS MODERNIZATION INITIATIVES

Backpay Management System (BMS)

The NLRB collects money from charged parties as a standard Board remedy whenever a violation of the NLRA has resulted in the loss of employment or earnings. These funds are held in a fiduciary account and then distributed to discriminatees per a settlement agreement or Board Order. In July 2016, the Agency completed a modernization effort of the BMS, which is used to track funds and create disbursement files that are transmitted to the Department of Treasury for the issuance of checks to discriminatees. The BMS also calculates federal tax withholdings including the employer's share of Social Security and Medicare.

The data gathered within the BMS is used to prepare a quarterly 941 form for the IRS and the annual W-2 and 1099-INT reports mailed to the discriminatees. The newly modernized system is available to the appropriate NLRB employees to upload discriminatee information, track the status of the backpay requests and receive timely information on the progress of the disbursement. The BMS maintains documentation to support each disbursement and has routing capabilities to ensure that all requests are properly approved. What once was a manual process is now more transparent with strengthened internal controls to provide assurance that the correct recipients are paid accurate amounts.

Contract Lifecycle Management (CLM)

The OCFO implemented Oracle's CLM system which is a fully integrated, procure-to-pay contract writing system. This system provided the OCFO with automated and auditable processes from purchase request generation through solicitation, with an integrated view of budget, acquisition, and finance to facilitate the timely completion and closeout of contract awards. The result of this action enabled the entire OCFO to work smarter, increase efficiency, and reduce back-office costs with standardized processes.



FUTURE FINANCIAL SYSTEMS MODERNIZATION PLANS

Oracle Business Intelligence Enterprise Edition (OBIEE)

The NLRB is investing in a new query and reporting tool available from Oracle. The tool will replace Discoverer, which will soon no longer be supported. The Oracle Business Intelligence Application (OBIA) is a business intelligence suite, including ad hoc query and analysis, dashboards, enterprise reporting, mobile analytics, scorecards and predictive analytics, on an architecturally integrated business intelligence foundation. The central component of the suite is Oracle Business Intelligence Enterprise Edition (OBIEE), which features a Common Enterprise Information Model for centralized metadata management, common query request generation and data access. We anticipate that these products will provide us with the information needed to enable our Agency to drive innovation, optimize operations, and deliver more relevant and timely information to decision makers.

webTA

The OCFO, in partnership with the Agency's Division of Administration (DofA), is working with the IBC to implement the Agency's new Time and Attendance (T&A) system, webTA. For the webTA system, the standard practice follows the standard Federal Government pay period schedule, which is based on a two-week pay period. The core functionality of webTA allows employees to request leave or premium pay, and to edit and submit their timecards to their supervisors for approval through a user-friendly, automated, web-based process. Supervisors will receive notifications by e-mail of pending requests requiring action and, after viewing and approving T&A requests, the data will be sent to the IBC for payroll processing. webTA allows the Agency HR administrators to serve as authoritative sources of information on the webTA system, and assists supervisors, timekeepers and employees in T&A preparation and technical questions.

ANALYSIS OF FINANCIAL STATEMENTS

The NLRB prepares annual financial statements in accordance with Generally Accepted Accounting Principles (GAAP) for federal government entities and subjects the statements to an independent audit to ensure their integrity and reliability in assessing performance. The NLRB's financial statements summarize the financial activity and financial position of the Agency. The financial statements, footnotes, and the balance of the required supplementary information appear in the Financial Section of this Performance and Accountability Report.

Balance Sheet – The NLRB assets were \$44.8 million as of September 30, 2016. The Fund Balance with Treasury, which was \$33.5 million, represents the NLRB's largest asset at 74.8 percent. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years.

Property, Plant, and Equipment, which represents the NLRB's second largest asset at 23.7 percent, was \$10.6 million and was primarily related to leasehold improvements and internal use software development costs. Of the remaining assets, Accounts and Interest Receivable increased by \$514 thousand due to an

increased effort in seeking reimbursement for third party sponsored travel and the potential recovery of funds related to discrepancies in the fiduciary account.

The NLRB liabilities were \$30.7 million as of September 30, 2016. Liabilities consist of amounts owed to vendors, governmental trading partners, and Agency employees. Changes in Accounts Payable with both governmental trading partners – a decrease of 39.4 percent – and vendors – an increase of 85.0 percent – was related to a more stringent contract monitoring, payment, and closeout process. Employee unfunded annual leave was 46.8 percent of liabilities, the NLRB's largest liability. The FECA Actuarial liability increased by \$160 thousand, or 18.5 percent, due to changing case load, and employer contributions increased by \$1.3 million due to payroll costs.

Statement of Net Cost – The NLRB's appropriation is used to resolve representation cases or ULP charges filed by employees, employers, unions, and union members. 89 percent of net cost of operations in FY 2016 was used to resolve ULP charges and 11 percent was used for representation case activities.

Statement of Changes in Net Position – The NLRB's net position is affected by changes in its two components: Cumulative Results of Operations and Unexpended Appropriations. From FY 2015 to FY 2016, there was a change in net position of \$342 thousand. This was in part due to a \$5.1 million decrease in the beginning balance due to a change in methodology in recording depreciation and amortization in FY 2014, which carried into FY 2015. A correction was also made to the beginning balance for \$599 thousand as well, due to the inaccurate closing of a general ledger account in FY 2015. This action had no impact on the statements which were presented for FY 2015. Thus, a restatement was not issued. The change in the beginning balance was countered by a \$4.5 million increase in imputed financing for employee benefits. Other significant changes to the balance included a transfer of funds to cover discrepancies in the fiduciary account and the liability owed, a decrease in miscellaneous collections received in relation to fines issued by the Board, and the cancellation of annual appropriations.

Statement of Budgetary Resources – The Statement of Budgetary Resources shows budgetary resources available and the status at the end of the period. It represents the relationship between budget authority and budget outlays, and reconciles obligations to total outlays. For FY 2016, the NLRB had available budgetary resources of \$281 million, the majority, \$274.2 million, was derived from new budget authority. Obligations were \$275.1 million for FY 2016, and total outlays for FY 2016 were \$271.5 million. Other

changes in the unobligated balance included a \$1.2 million decrease due to the cancellation of annual appropriations. The status of budgetary resources had a \$120 thousand increase in apportioned funds and a \$841 thousand increase in unapportioned funds due to increased monitoring of obligations and payments from expired funds. Actual offsetting collections increased by \$116 thousand, or 188.4 percent, due to a change in accounting methodology, increased collections of accounts receivable, and payroll.

LIMITATIONS OF PRINCIPAL FINANCIAL STATEMENTS

The principal financial statements of the NLRB have been prepared to report the financial position and results of operations of the Agency, pursuant to the requirements of 31 U.S.C. 3515(b). While the statements have been prepared from the books and records of the entity in accordance with generally accepted accounting principles for federal entities and the formats prescribed by Office of Management and Budget, the statements are in addition to the financial reports used to monitor and control budgetary resources, which are prepared from the same books and records.

The statements should be read with an understanding that they are for a component of the U.S. Government, a sovereign entity.

COMPLIANCE WITH LAWS AND MANAGEMENT ASSURANCES

ANTIDEFICIENCY ACT (ADA)

The Antideficiency Act prohibits federal agencies from:

- making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law;
- involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law;
- accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property; and
- making obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by Agency regulations.

There were no known violations of the Anti-Deficiency Act during FY 2016 at the NLRB.

DEBT COLLECTION IMPROVEMENT ACT (DCIA)

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA) requires agencies to periodically

adjust civil penalties for inflation if either the amount of the penalty or the maximum penalty is set by law. In addition, the President is required to report certain information to Congress either annually or every five years. The FCPIA was amended by the Debt Collection Improvement Act of 1996. The DCIA amended the FCPIA to require each Federal agency to review and report annually on their internal standards and policies regarding compromising, writing down, forgiving, or discharging debt. The Agency refers delinquent debts to the Treasury Offset Program (TOP).

DIGITAL ACCOUNTABILITY AND TRANSPARENCY ACT (DATA ACT)

The DATA Act expands the Federal Funding Accountability and Transparency Act (FFATA) of 2006 to increase accountability and transparency in federal spending, making federal expenditure information more accessible to the public. The goal of the DATA Act is to make federal spending more accessible, searchable, and reliable so taxpayers have the opportunity to understand the impact of Federal funding for Federal programs/ entities.

As required by the Office of Management and Budget (OMB) Memorandum M-15-12, issued on May 8, 2015,



the NLRB drafted a DATA Act of 2014 Implementation Plan in order to increase transparency of federal spending as required the DATA Act and FFATA Act.

The Acquisition Management Branch (AMB) inputs contract and Interagency Agreements (IAAs) directly into the Federal Procurement Data System - Next Generation (FPDS-NG). The number of contracts and IAAs are less than 50, which has made this a manageable workload for the staff.

The NLRB's service provider, IBC, has identified 47 of the required reportable data elements that will be provided for the Agency to report from existing systems. The remaining elements are being analyzed by the NLRB.

The FY 2017 Congressional Justification has restructured the five major Program Activities and established the unique award ID as the Oracle Financial system generated Purchase Order number. The NLRB also already submits object class and program activity data from the Oracle Financial system to OMB and has done this since FY 2013.

FEDERAL INFORMATION SECURITY MANAGEMENT ACT (FISMA)

The Federal Information Security Management Act of 2002, as amended by the Federal Information Security Modernization Act of 2014, requires Federal agencies to ensure adequate security protections for Federal information systems and information. Under this Act, Federal agencies must submit annual FISMA reports to OMB.

Both the Office of the Chief Information Officer (OCIO) and the Inspector General submit FISMA annual reports to DHS and OMB using a tool called CyberScope. The Agency also submits an annual letter to Congress, as required by FISMA.

GOVERNMENT CHARGE CARD ABUSE PREVENTION ACT

On October 17, 2014 the President signed an Executive Order (EO) directing the Federal government to establish and maintain safeguards and internal controls for the charge card program. The NLRB

evaluated the charge card program as directed by the guidance provided in OMB Circular A-123 Appendix B, OMB Memorandum M-12-12 *Promoting Efficient Spending to Support Agency Operations*, and OMB Memorandum M-13-21 *Implementation of the Government Charge Card Abuse Prevention Act of 2012*. The effectiveness of the Agency's purchase card and travel card program was assessed through enhanced monitoring procedures to detect fraud, waste and abuse.

IMPROPER PAYMENTS INFORMATION ACT (IPIA)

The Improper Payments Information Act of 2002, as amended by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 and IPERIA of 2012, requires agencies to review all programs and activities they administer and identify those which may be susceptible to significant erroneous payments. For all programs and activities in which the risk of erroneous payments is significant, agencies are to estimate the annual amount of erroneous payments made in those programs. The NLRB's risk assessment indicated that the salaries and expenses program was not susceptible to significant improper payments. A detailed report of the NLRB's improper payments activities is presented in the Other Information section on page 98.

PROMPT PAYMENT ACT

The Prompt Payment Act was enacted in 1982 to ensure the federal government makes timely payments. Bills are to be paid within 30 days after receipt and acceptance of material and/or services - or after receipt of a proper invoice whichever is later. When payments are not made timely, interest is paid. The Agency made late payments resulting in interest penalties of \$372 in FY 2016.

FEDERAL MANAGERS' FINANCIAL INTEGRITY ACT (FMFIA)

The Federal Managers' Financial Integrity Act requires federal agencies to develop and implement appropriate and cost-effective internal controls for results-oriented management, assess the adequacy of those internal controls, identify needed areas of

Internal Control Elements

CONTROL ENVIRONMENT	Creating and maintaining an organizational structure that promotes a high level of integrity and personal and professional standards, and sets a positive and supportive attitude toward internal controls through conscientious management
RISK ASSESSMENT	Identification and analysis of risks that could impede the achievement of Agency goals and objectives
CONTROL ACTIVITIES	Policies, procedures, techniques, and mechanisms to ensure proper stewardship and accountability for government resources and for achieving effective and efficient program results
INFORMATION AND COMMUNICATIONS	Ensures the Agency's control environment, risks, control activities, and performance results are communicated throughout the Agency
MONITORING	Assessing quality of performance over time to ensure that internal control processes are appropriate and effective

improvement, take corresponding corrective action, and provide an annual statement of assurance regarding internal controls and financial systems. The annual statement of assurance and management control over financial application controls and financial reporting submitted by the NLRB's service provider follows this section.

NLRB management is responsible for establishing and maintaining an environment throughout the Agency that is positive and supportive of internal controls and conscientious management. The NLRB is committed to management excellence and recognizes the importance of strong financial systems and an internal control system that promotes integrity, accountability, and reliability.

Internal control systems are expected to provide reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations
- Reliability of financial reporting
- Compliance with applicable laws and regulations

In assessing whether these objectives are being achieved, the NLRB used the standards outlined above in accordance with OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, dated July 15, 2016.

The NLRB's approach to assessing its internal controls included the identification and assessment of risks by 31 designated managers on an Agency-wide basis. In completing this annual review, the designated managers, in conjunction with subordinate staff as needed, used personal judgment as well as other sources of information. These sources included: knowledge gained from day-to-day operations; Inspector General Audits and investigations; program evaluations; reviews of financial systems; annual performance plans; and previous management reviews. The designated managers were responsible for conducting reviews of program operations, assisting program offices in identifying risks and conducting internal control reviews, issuing reports of findings, and making recommendations to improve internal controls and risk management.



Based on the internal control program, reviews, and consideration of other information, senior management's assessment of the NLRB's internal controls is that controls are adequate to provide reasonable assurance in support of effective and efficient operations, reliable financial reporting, and compliance with laws and regulations.

The Statement of Assurance provided on page 37 is required by the Federal Managers' Financial Integrity Act (FMFIA) and OMB Circular A-123, *Management's Responsibility for Internal Control*.

FMFIA Section 2, Management Control

Section 2 of the FMFIA requires federal agencies to report, on the basis of annual assessments, any material weaknesses that have been identified in connection with their internal and administrative controls. The reviews that took place in FY 2016 provide reasonable assurance that NLRB systems and internal controls comply with the requirements of FMFIA.

FMFIA Section 4, Financial Management Systems

Section 4 of the FMFIA requires that agencies' financial management systems controls be evaluated annually. The NLRB evaluated its financial management systems for the year ending September 30, 2016 in accordance with the FMFIA and OMB Circular A-127, *Financial Management Systems*, Section 7 guidance. The NLRB's financial systems, taken as a whole, conform to the principles and standards developed by the Comptroller General, OMB, and the Department of Treasury.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, DC

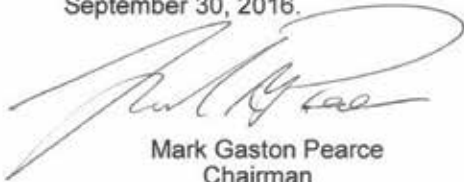
October 5, 2016

ANNUAL STATEMENT OF ASSURANCE

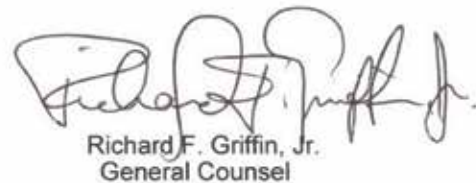
Management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the Federal Managers' Financial Integrity Act (FMFIA). The NLRB assessed the effectiveness of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with Office of Management and Budget (OMB) Circular A-123, Management's Responsibility for Internal Control. Based on the results of this evaluation, the NLRB can provide reasonable assurance that its internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations as of September 30, 2016 was operating effectively, and no material weaknesses were found in the design or operation of the internal controls.

In accordance with the requirements of OMB Circular No. A-123, Appendix A, the NLRB assessed the effectiveness of internal control over financial reporting, which includes internal control related to the preparation of the annual financial statements, safeguarding of assets, and compliance with applicable laws and regulations governing the use of budget authority and other laws and regulations that could have a direct and material effect on the financial statements. The result of this evaluation provides reasonable assurance that the NLRB's internal control over financial reporting was operating effectively as of September 30, 2016.

The NLRB also conducted reviews of financial management systems. Based on the results of these reviews, the NLRB can provide reasonable assurance that the financial management systems comply with the applicable provisions of the FMFIA as of September 30, 2016.



Mark Gaston Pearce
Chairman



Richard F. Griffin, Jr.
General Counsel



United States Department of the Interior
Office of the Secretary



October 3, 2016

Dear Valued Customer:

The purpose of this letter is to provide assurance that the Oracle Federal financial application controls remained unchanged for the period July 1, 2016, through September 30, 2016.

You were previously notified that KPMG LLP examined the description of the Oracle financial application controls at the Department of the Interior (DOI), Interior Business Center (IBC). The results of their review and analysis were provided in a Service Organization Control Report (SSAE16) covering the period July 1, 2015, through June 30, 2016. A softcopy version of the report was provided to you mid-July 2016.

The SSAE 16 review was conducted for the purpose of expressing an opinion as to whether (1) IBC's description of the Oracle application controls presents fairly in all material respects the aspects of the IBC controls that may be relevant to a user organization's internal control; (2) the controls included in the description were suitably designed to achieve the control objectives specified in the description if those controls were complied with satisfactorily; and (3) such controls had been placed in operation as of June 30, 2016. KPMG also performed testing procedures designed to determine the effectiveness of the specified controls in meeting control objectives specified by the IBC.

This letter provides representations and assurances related to Oracle financial application controls at the IBC for the period July 1, 2016, through September 30, 2016. This time period was not covered by the SSAE 16 examination report previously provided. To the best of our knowledge and belief, there have been no subsequent events that would have a significant effect on user organizations that have not been disclosed to you. The controls that have been placed in operation as of June 30, 2016, did not change for the period of July 1, 2016, through September 30, 2016. The description of controls in the FY 2016 SSAE 16 examination report presents fairly the aspects of IBC controls that were in place as of September 30, 2016.

Page 2 of 2

October 3, 2016

The IBC also conducted an assessment of the effectiveness of internal control over financial reporting for customers where the IBC processes your financial transactions, which includes safeguarding of assets and compliance with applicable laws and regulations in accordance with the requirements of Appendix A of OMB Circular A-123 and the CFO Council's Implementation Guide dated July 31, 2005, as implemented by the Department. The assessment focused on the specific IBC financial business processes such as financial reporting, revenue management, funds management, and procurement in place as of June 30, 2016. As of that date, the IBC noted no material or significant deficiencies verified through A-123 Appendix A financial transaction testing. Thus, the IBC asserted internal controls over financial reporting were suitably designed and operating effectively. The procedures and management controls for processing financial transactions have not changed since June 30, 2016. As a result, the IBC continues to assert substantial compliance with financial accounting and reporting controls in place from July 1, 2016, through September 30, 2016.

If you have any questions on this assurance statement, please contact Dean N. Martin, Chief Enterprise Risk Manager, Dean_N_Martin@ibc.doi.gov or 303-969-5195.

Sincerely,



Donna L. Edsall, CPA
Associate Director
Financial Management Directorate
Interior Business Center

KEEPING PACE WITH CHANGES IN THE ECONOMY

The NLRB is charged with protecting workers' rights in an ever-changing economy. As employer-employee relationships continue to adapt and shift, some cases benefit from centralized consideration at Headquarters. For that reason, each year the General Counsel identifies priority issues and initiatives that are to be submitted to the Division of Advice.

In March 2016, the General Counsel announced that among others, the following types of cases are to be submitted to the Division of Advice for review and guidance.

- Cases involving an allegation that the employer's permanent replacement of economic strikers had an unlawful motive under *Hot Shoppes*, 146 NLRB 802 (1964).
- Cases that involve the application of *Purple Communications*, 361 NLRB No. 126 (2014), to electronic systems other than email; cases where the employer has provided specific evidence of special circumstances privileging a denial of access to its email system; and cases presenting the question of whether the employer engaged in unlawful surveillance of employee emails.
- Cases involving make-whole remedies for construction industry applicants or employees who sought or obtained employment as part of an organizing effort as enunciated in *Oil Capitol Sheet Metal, Inc.*, 349 NLRB 1348 (2007).
- Cases involving plant closure threats where there is little evidence of dissemination to other employees, but where an argument could be made that such dissemination should be presumed. See *Springs Industries*, 332 NLRB 40 (2000), overturned by *Crown Bolt*, 343 NLRB 776 (2004).
- Cases involving allegations that "English-only" policies violate Section 8(a)(1).
- Cases involving the employment status of workers in the on-demand economy.
- Cases involving the question of whether the misclassification of employees as independent contractors violates Section 8(a)(1).

The above list is not exhaustive as unanticipated cases that raise novel issues arise from time to time. As new issues arise, the Agency will continue to investigate and review cases to ensure that the protections of the Act keep pace with the economy.

PERFORMANCE



Protecting Democracy in
the Workplace Since 1935

PROGRAM PERFORMANCE

PERFORMANCE GOALS AND OBJECTIVES

This section of the PAR details the NLRB's efforts to meet its strategic and performance goals. The two mission-related goals of the NLRB's Strategic Plan represent the core functions of the Agency in enforcing the NLRA as efficiently as possible and in a manner that gives full effect to the rights afforded to all parties under the Act. The two support goals further enable the Agency to accomplish its mission. Please

see Appendix D for diagrams of the complete structure of the four Agency goals.

The Board and the General Counsel share a common goal of ensuring that the NLRA is fully and fairly enforced. Although they have separate statutory functions, representatives of the Board and the General Counsel work together in developing one comprehensive Strategic Plan and Performance and Accountability Report.

MEASURING PERFORMANCE

One of the NLRB's human capital goals is to create a results-oriented performance culture that clearly links employee performance and pay to the attainment of the NLRB's strategic goals. While creating the updated Strategic Plan for FY 2014 to FY 2018, the Agency used the two mission-related goals from the previous Strategic Plan as the foundation to build upon the traditional performance measurement approach that emphasizes individual segments of case processing to promote timely, efficient, and well-managed casehandling. The Agency then established two support goals that give a broader picture of how the Agency achieves its mission.

As to Agency success in bringing effective resolution to labor disputes in a timely manner, it should be noted that it is difficult for an agency such as the NLRB to measure "outcomes" in the sense intended

by the authors of the Government Performance and Results Act (GPRA) and the GPRA Modernization Act (GPRAMA). In the representation case area, for instance, the Agency does not control or seek to influence the results of elections, but strives instead to ensure the rights of employees to freely and democratically determine, through a secret ballot election, whether they wish to be represented by a labor organization. If the Agency concludes that all of the necessary requirements for conducting an election have been met, it will either direct an election or approve the parties' agreement to have an election. The performance measure that the Agency has established for the conducting of elections is objective and is not dependent on the results of the election. The true outcome of properly conducted elections is employees freely exercising their statutory rights as set out in the NLRA.

The aim of the Agency is to prevent industrial strife and unrest that burdens the free flow of commerce. An indicator of success in the achievement of this aim is labor peace. While it is difficult to quantify by the number of ULPs, the Agency can quantify our commitment to resolve all disputes that are brought before us, and to provide a remedy and ensure that labor peace is restored. Noting that the Agency cannot sua sponte investigate actions of an employer or labor union without a charge being filed, the NLRB established two performance measures. The timeliness and quality of case processing, from the filing of an ULP charge to the closing of a case, are the focus of those performance measures.

The tables and narratives in this section show the proposed annual targets for performance measures and management strategies for the five-year period covered by the current Strategic Plan effective from 2014 through 2018 for the two mission-related goals. The actual results achieved for the mission-related goals for FYs 2011 through FY 2013 can be found in Appendix C.

This section also documents the performance regarding the support goals which are management strategy driven and presented in a summary format. The results achieved for the support goals in FY 2014 and 2015, can be found in Appendix C. These goals originated in FY 2014, thus there is no historical data prior to that year.

STRATEGIC GOAL 1 (MISSION)

Promptly and fairly investigate, prosecute, and resolve ULP charges under the National Labor Relations Act.

Objectives:

1. Achieve established performance measures for the resolution of ULP charges.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner.

Measure: The percentage of all meritorious ULP charges resolved by settlement or compliance with a Board Order or Court judgment within 365 days of the filing of the ULP charge.

This measure focuses on meritorious (prosecutable) ULP cases, and the time taken to close them on compliance, including time spent on both the General Counsel and Board sides of the Agency. Compliance marks the point where an employer or union has ceased engaging in the ULP conduct being prosecuted and has taken appropriate affirmative action, including reinstatement and the payment of backpay, to make whole those injured by the ULP.

Once a Regional Director has determined a ULP charge has merit, a complaint issues and, absent settlement, the case is scheduled for a hearing before an ALJ. Settlement efforts continue throughout the course of the litigation. The vast majority of

settlements are achieved before trial. Once the ALJ issues a decision, the decision can then be appealed to the Board. The Board, in turn, will consider the case and issue a final order resolving it. Ordinarily, the Regional Office will attempt to secure compliance in the 30-day period following the Board's order. If compliance cannot be obtained, the Region will refer the case to the Appellate and Supreme Court Litigation Branch of the Division of Enforcement Litigation, which typically proceeds to seek a judgment from an appropriate U.S. Court of Appeals enforcing the Board's order.

Following final court judgment, any disagreements about what steps are necessary before the case can be closed on compliance are resolved either in compliance proceedings before the Board or a reviewing court, or in extreme cases, in contempt proceedings.

ULP cases are closed on compliance when the remedial actions are complete. This measure includes all litigated cases, including those appealed to the U.S. Courts of Appeal or the Supreme Court.

In FY 2016, the NLRB exceeded its goal of 82.6 percent, by 0.1 percentage point, to close all prosecutable ULP cases in 365 days from the docketing of the charge.

GOAL NO. 1, TABLE 1

Percentage of ULP Cases Closed on Compliance Within 365 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	82.5%	82.5%	82.6%	82.7%	82.8%
ACTUAL	83.9%	80.4%	82.7%		

Counting of days: The 365 days is calculated from the date the charge is docketed.

Measure: The percentage of all ULP charges resolved by withdrawal, dismissal, settlement or compliance with a Board order or Court judgment within 120 days of the filing of the charge.

This measure focuses on the time taken to resolve a ULP charge, including time spent on both the General Counsel and the Board sides of the Agency.

After an individual, employer, or union files a ULP charge, a Regional Director evaluates it for merit and decides whether to issue a complaint. If a charge is found to have no merit, which occurs in about 2/3 of the cases, it is dismissed if the charging party does not withdraw it. A dismissal can be appealed to the General Counsel. If a charge is found to have merit, a complaint issues, unless a settlement agreement is reached. If a case is not settled but instead is fully litigated before an ALJ, the Board will issue an order, which may be enforced or appealed to the US Court of Appeals.

A ULP case is resolved and closed when it has been completely processed, such that the charge allegations are investigated, and, where appropriate, remedied and there is no further action to be taken by the Agency.

In FY 2016, the NLRB did not meet its goal of 72.4 percent, by 1.6 percentage points, to close ULP cases within 120 days from the docketing of the charge.

Out of the 21,326 ULP cases reviewed in FY 2016, 1,737 cases were deferred to the parties' grievance-arbitration procedures, all of which took over 120 days. The grievance-arbitration procedures are outlined in the collective bargaining agreements of the parties. The Agency must wait for the arbitration proceedings to conclude. Once the arbitrator renders a decision, the Agency reviews the decision.

The Agency also cleared 387 cases in compliance which had been held up as a result of two-member Board decisions.

Regional Offices took on a substantial task to process grievance-arbitration deferrals and the two-member Board backlog. While it effected the overall processing days reported in FY 2016, Regions cleared out over 2,000 backlog cases.

GOAL NO. 1, TABLE 2

Percentage of ULP Charges Resolved Within 120 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	72.3%	72.3%	72.4%	72.4%	72.5%
ACTUAL	72.3%	70.6%	70.8%		

Counting of days: The 120 days is calculated from the date the charge is docketed.

Management Strategies: In addition to the Quality Review Program of the Division of Operations-Management, which is highlighted in the Program Evaluation section on page 55, and which ensures that all matters before the Agency are handled in a fair and consistent manner, the following additional steps are undertaken to assist with compliance:

- The Division of Operations-Management and the Division of Enforcement Litigation actively work with the Regions to identify cases pending before the Board that are suitable for resolution through the Board's Alternative Dispute Resolution (ADR) program.
- The Compliance Unit conducts ongoing review of compliance case inventory and promptly reviews ALJ decisions, Board decisions and pending Board

STRATEGIC GOAL NO. 2 (MISSION):

Promptly and fairly resolve all questions concerning representation of employees.

Objectives:

1. Achieve established performance measures for the resolution of all questions concerning representation of employees.
2. Ensure that all matters before the Agency are handled in a fair and consistent manner.

ADR and court mediation proceedings to ensure that the Regions have the resources necessary to deal with difficult or challenging compliance issues. The assistance may range from assigning a person to be available for consultation to having a person or team, either in Headquarters or in another Region, perform all of the work or a particular task in the case.

- The Board tracks, on an ongoing basis, which Regions have cases in the ADR program, and which parties requested that the cases be placed in the ADR program.

Measure: The percentage of representation cases resolved within 100 days of filing the election petition.

This measure focuses on the time taken to resolve a representation case, including time spent on both the General Counsel and the Board sides of the Agency.

An employer, labor organization, employee, or group of employees may file a petition in an NLRB Regional Office requesting an election to determine whether a majority of employees in an appropriate bargaining unit wish to be represented by a labor organization. When a petition is filed, the Agency works with parties toward a goal of reaching a voluntary agreement regarding conducting an election, as opposed to a Regional Director directing an election, if appropriate. This measure reflects the percentage of representation cases closed within 100 days. A case is closed when the question as to whether or not a labor organization will represent employees has been finally resolved.

Representation cases are resolved and closed in a number of ways:

- Cases may be dismissed before an election is scheduled or conducted. Dismissals at an early stage in processing may be based on a variety of reasons, including: the employer does not meet the Agency's jurisdictional standards; the petitioner fails to provide an adequate showing of interest to support the petition; and/or the petition was filed in an untimely manner.
- Cases may also be withdrawn by the petitioner for a variety of reasons, such as lack of sufficient support among the bargaining unit.
- The majority of cases are resolved upon issuance of either a certification of representative (the union prevails in the election) or a certification of results (the union loses the election).
- In a small percentage of cases, there are post-election challenges or objections to the election. The case is not closed until the challenges and/or objections have been resolved.

In FY 2016, the NLRB exceeded its goal of 85.5 percent by 2.1 percentage points to close all representation cases within 100 days from the filing of the petition.

GOAL NO. 2, TABLE 1

Percentage of Representation Cases Resolved Within 100 Days

YEAR	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
TARGET	85.3%	85.4%	85.5%	85.7%	85.8%
ACTUAL	88.1%	87.1%	87.6%		

Counting of days: The 100 days is calculated from the date the petition is formally docketed.

Management Strategies: The following memos outline the steps taken to assist with compliance.

GC 15-06: Guidance Memorandum on Representation Case Procedure Changes Effective April 14, 2015 <https://www.nlrb.gov/reports-guidance/general-counsel-memos>

This memo outlines the final rule that the Board adopted on December 15, 2014 that modifies the procedures applicable to the processing of representation cases. The changes went into effect on April 14, 2015 and apply to all representation cases filed on or after that date. The Board adopted these amendments to provide targeted solutions to enable the Board to better fulfill its duty to protect employees' rights by removing unnecessary barriers to the fair and expeditious resolution of representation matters, simplifying representation-case procedures, codifying best practices, and making them more transparent and uniform across regions. The memo details the following: Initial processing of the petition; election agreements; hearing preparation; hearings and pre-election decisions; election preparations and election; post-election procedure and decisions; blocking charges; election certifications; and use of voter list.

OM 16-16 (revised): Dates for Hearings and Statement of Position Due Dates <https://www.nlrb.gov/reports-guidance/operations-management-memos>

This memo was sent to all Regional Directors, Officers-in-Charge and Resident Officers from the

Division of Operations-Management regarding the changes to the procedures applicable to processing representation cases with a focus on specifying the date for scheduling a pre-election hearing in RC, RD, and RM cases and for the Statement of Position due date. A chart setting forth such dates through April 28, 2017 is attached to the memorandum.

GC 15-08 (Revised): Guidance Memorandum on Electronic Signatures to Support a Showing of Interest <https://www.nlrb.gov/reports-guidance/general-counsel-memos>

This memo was sent to all Regional Directors, Officers-in-Charge and Resident Officers from the General Counsel regarding the changes to the procedures applicable to processing representation cases with a focus on the question of whether the proposed regulations should permit or prohibit the use of electronic signatures to support a showing of interest. The Board determined that its regulations as currently written are sufficient to permit the use of electronic signatures. The Board then charged the General Counsel with the responsibility to determine whether and when and how electronic signatures can practically be accepted and to issue guidance on the matter. The General Counsel determined that the evidentiary standards that the Board has traditionally applied to handwritten signatures apply equally to electronic signatures and that it is practicable to accept electronic signatures in support of a showing of interest if the Board's traditional standards are satisfied.

STRATEGIC GOAL 3 (SUPPORT):**Achieve Organizational Excellence****Objectives:**

1. Recruit, develop, and retain a highly motivated, talented, and diverse workforce to accomplish our mission.
2. Promote a culture of professionalism, mutual respect, and organizational pride.

Strategic Goal 3 is a management strategy based goal. There are two objectives that have their own set of initiatives. Each initiative has a set of management strategies that were created in order to show the different offices of the Agency that are involved in achieving the goal. For the full outline of the goal please see Appendix D-3 on page 125.

Organizational Excellence ensures that all organizational systems are aligned and functioning cohesively. Continuous commitment to assessing and addressing organizational excellence enables the Agency to proactively enhance the organization's service. Accomplishments in FY 2016 include:

Employee Development

- The Office of Human Resources (OHR) continued its partnership with the Office of Personnel Management (OPM) on the implementation of USA Performance, a new performance management reporting system.
 - OHR issued a memorandum titled *Performance Management Validation Cycle* to all Agency employees to inform that all management officials had to complete a Performance Management Validation Spreadsheet certifying that they had issued properly executed performance plans to all of their employees.
 - OHR completed a data validation, which showed that more than 86 percent of employees were issued properly executed performance plans. OHR's goal of 100 percent execution of performance plans will be achieved with the full implementation of USA Performance in June 2017.
- The Office of Employee Development (OED) developed online content for legal writing and provided legal writing coaching for Headquarters employees.

- OED is updating the Management Development Program curriculum to align with the Federal Supervisory and Managerial Frameworks and Guidance released by OPM on September 28, 2015.
- The Security Branch worked with OED to release the 2016 Continuity of Operations Training for Agency personnel via Skillport, and also hosted an Active Shooter Training Event at NLRB Headquarters, which was internally posted for access by all employees.
- In compliance with OPM's hiring reform efforts, OHR implemented a Standard Operating Procedure to provide a detailed explanation and overview of the processes to be followed when a vacancy has been identified and when positions are filled internally.

Workforce Management

- OHR continued to utilize the Workforce Recruitment Program for College Students with Disabilities as a hiring flexibility for managers to recruit qualified postsecondary students and recent graduates with disabilities who are interested in summer internships or permanent jobs.
- OHR leveraged its relationship with U.S. Department of Veterans Affairs through the Feds for Vets Program, which allows for the recruitment of veterans under various special hiring appointing authorities, such as veterans who are 30 percent or more disabled. Under the program, approximately five special hiring appointments were completed and one appointment was converted to a career-conditional appointment.
- The Human Capital Planning Office (HCPO) implemented a communication plan to encourage employees to take the Employee Viewpoint Survey (EVS), which included guidance on monitoring the participation rates, talking points, and FAQs.

- OHR made enhancements to the New Employee Orientation that includes more information about the Agency to help new employees transition successfully.
- The Office of Equal Employment Opportunity (OEEO) developed and implemented a training program mandatory for all supervisors' managers and senior executive leaders on whistleblower rights and protections for all Agency employees.
- OEEO recommended that supervisors' and managers' appraisals contain more specific language to measure their efforts to maintain an inclusive work environment, as an action item from the MD715 report submitted to the EEOC.
- OEEO, OED, and the Division of Operations-Management collaborated in the Agency workgroup on the Culture Enhancement Program and rolled out training podcasts and interviews from a diverse array of Agency employees in segments throughout the fiscal year.
- OEEO sponsored the Agency's network of Asian American and Pacific Islander employees in its request for support from Agency leadership. OEEO conducted a briefing with Agency leadership on the topic of Employee Resource Groups (ERGs).
 - There was a briefing by OPM diversity and inclusion experts for Agency leadership to address questions about ERGs.
 - Consultations with the unions representing Agency employees will assist OEEO when drafting final recommendations to Agency leadership.
- OEEO and OHR briefed leadership on the Strategic Recruitment Plan and received critical feedback for the plan. OEEO and OHR are working to implement the plan in early fiscal year 2017.
- OEEO develops and hosts special emphasis observances at Headquarters, some of which have been made available to field offices through simultaneous broadcast and/or digital recording.

Motivation

- HCPO conducted 16 EVS organizational assessments with senior executives on the 2015 EVS results focusing on: identifying Agency trends/barriers behind low survey scores; reviewing and prioritizing targeted areas of change; identifying outcomes that enable the organization to transition to higher EVS scores; identifying best practices for managing staff to higher levels of engagement; and action planning efforts.
 - During the organizational assessments, results were provided and the two EVS Agency-wide strategic areas of focus, effective leadership and communication, were discussed.
 - Agency leadership will be implementing action plans/best practices designed to drive higher levels of employee satisfaction and engagement within their respective organizations, with a particular focus on improving effective leadership and communication.
 - The HCPO also developed an EVS Action Planning Toolkit for organizations to utilize in developing action strategies to effect change.

STRATEGIC GOAL NO. 4 (SUPPORT):**Manage Agency resources in a manner that instills public trust.****Objectives:**

1. Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.
2. Evaluate and improve the Agency's outreach program.
3. Conduct all internal and external Agency business in an ethical and timely manner.

Strategic Goal 4 has both measures and management strategies. There are three objectives that have their own set of initiatives. Each initiative has a set of measures and/or management strategies that show the different offices of the Agency that are involved in achieving the goal. For the full outline of the goal please see Appendix D-4 on page 126.

Federal employees are charged with managing programs and federal funds in an efficient and effective manner. As stewards of these federal funds, the Agency is making every effort to instill public trust. Accomplishments in FY 2016 include:

Information and Technology:

The Agency uses a legacy case tracking solution called NxGen, which is an enterprise case management system.

The NxGen System presently manages:

Internal users	1,368
Cases	309,700
Case Actions of the Agency	1,001,206
Documents, images, and videos (each linked to its Action and Case)	7,543,929

The Agency expanded electronic distribution of United States Postal Service (USPS) case documents in FY 2016 for 15 document types, resulting in 626 documents being sent to the USPS electronically, which created savings for the NLRB.

The Agency uses an electronic filing program (E-File) to allow constituents to electronically file documents with the Agency.

Number of E-Filings Received	51,229
Number of Documents Received	79,011
Number of cases filed thru E-Filing Charges and Petitions	9,958
Number of Board and ALJ Decisions E-Served	803
Total Number of parties E-Served Decisions	54,262
Number of E-Deliveries of Case Documents	3,546

The total number of case documents available for public access in FY 2016 was 984,663.

In FY 2016, the Agency expanded the use and capabilities for electronic filing to enable parties to E-File charges and petitions using an online forms wizard on the NLRB website that automatically creates the charge or petition form.

Number of cases filed through Charge and Petition Wizard in FY 2016 was 805.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the 564 document types available to the public.

- The Administrative Systems team continued its effort to migrate all content from the current intranet platform, which was mostly static, to a new intranet platform office by office.
- The team automated and launched the process of authoring, editing, approving and publishing of Division of Operations-Management memoranda.
- The team completed the automation of the training request and approval process by developing a web-

based form with routing, approval, data storage for advanced reporting, and records management.

- The Agency awarded its Unified Communications Contract (UCC) on September 24, 2014. Through FY 2016, 48 field offices, the two existing datacenters, two new voice datacenters, and the Agency's Headquarters were upgraded to the new network, and 47 field offices were migrated fully migrated to Skype for Business.
- In FY 2016, the OCIO deployed over 1,020 iPhone 6s and 6-Pluses to the Field.

Financial Management:

- To enhance internal controls of the purchase card program, Acquisition Management Branch (AMB), in coordination with the Budget Office, implemented a process by which quarterly target amounts for purchase card spending are sent to each of the Headquarters and Regional Offices.
 - For the field, these amounts are disseminated at the beginning of each quarter to the Division of Operations-Management, which is responsible for communicating specific dollar amounts to the respective Regional Offices and for tracking the overall expenditures from the Regional Offices.
 - For Headquarters, in addition to quarterly target amounts sent to the Headquarters Offices, all Headquarters purchase card holders submit a Form 13 (Requisition/Procurement Request Form) for certification and approval of appropriated funds prior to making any purchase via their Government issued purchase card. This process helps certify that appropriated funds are approved and available for purchase.
 - AMB provided monthly and quarterly reports to the Budget Office, which offered greater insight and transparency on purchasing habits and spending. By spending hours analyzing what was being purchased on the purchase
- card and working with the Budget Office, senior leadership had more visibility into that budget line item on the Spend Plan. Analysis of this data also identified purchases that should be on a contract and led to the initiative of quarterly bulk purchasing of office supplies.
- In the Agency's continuing effort to increase its financial integrity, financial statement crosswalks were established in order to accurately and efficiently integrate general ledger account balances to the NLRB financial statements. This reduces the timeframe it takes to produce the statements.
- Updated and submitted the NLRB Travel Card Management Plan, as well as travel charge card metrics, to OMB per the A-123 Appendix B guidance.
- Developed and disseminated procedure guides for witness payment processes to allow for more timely payments.
- Developed and disseminated travel reimbursement processes internally with accounting technicians and externally with office managers and travel arrangers to increase accuracy in travel reimbursements.
- Successfully implemented the Undelivered Orders (UDO) review process, performed on a quarterly basis, that assists in liquidating obligations timely and accurately.
- As demonstrated in the chart below, the NLRB has far exceeded the statutory goals established by the Small Business Administration (SBA) in all categories except one, namely the service-disabled veteran-owned small businesses, where it fell below the goal by 0.58 percentage points. AMB continues to focus on small businesses as the supplier of choice, and particularly on increasing the number of awards to service-disabled veteran-owned small businesses.
- During FY 2016, the Agency reported a total of \$20.26 million and 372 contract actions in the

Fiscal Year SBA Goaling Report

Category	Goal	2016	2015	2014	2013
Small Business	23%	36.51%	39.75%	31.65%	34.13%
Women Owned Small Business	5%	11.19%	12.46%	13.5%	17.81%
Small Disadvantaged Business	5%	8.02%	10.71%	11.05%	7.36%
Service-Disabled Veteran Owned Small Business	3%	2.42%	0.31%	0.97%	0.32%
HUBZone	3%	3.43%	2.13%	2.27%	0.84%

FPDS-NG. Of this amount, \$7.4 million and 181 actions went to small businesses.

Agency Outreach:

- Designated Immigration Coordinators in each Regional Office act as a liaison between the Office and Headquarters staff regarding casehandling issues that may affect the immigrant worker community.
- The Agency prepared outreach materials for immigrant communities for use during outreach events, including a letter that outreach coordinators may use to introduce themselves to organizations that serve immigrant communities for outreach purposes. The outreach coordinators have been provided with a “collaboration packet” with contact information for other agency counterparts at the EEOC, DOL’s Wage and Hour Division (WHD), and OSHA.
- During FY 2016, the Agency provided direct outreach to immigrant populations by:
 - Speaking in Spanish and other languages at events organized by consulates and other community groups, such as the Workplace Justice Project, to educate the public about the NLRA.
 - Participating in interviews on Spanish-language radio stations.
 - Speaking at naturalization ceremonies to new citizens.
 - Participating in Asian American and Pacific Islander Public Interest and Public Service Panels.
 - Meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes.
- Activities directed at the youth population include:
 - Leading discussions for high school and middle school classes concerning the development of the NLRA and the New Deal, as well as workers’ statutory rights and Board processes.
 - Holding mock trials for schools to demonstrate how an unfair labor practice trial is conducted.
 - Engaging in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers.
 - Participating in a union-sponsored youth-to-youth apprentice training.

- The Agency is Partnering with the Department of Homeland Security (DHS), WHD, OSHA, Office of Labor Management Standards (OLMS), and Office of Federal Contract Compliance Programs (OFCCP), DOJ’s Office of Special Counsel (OSC), and EEOC in an IWG for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws. The work group seeks to:
 - Ensure agencies’ immigration enforcement and worker protection policies allow for workers’ cooperation with labor and employment law enforcement authorities without fear of retaliation;
 - Ensure federal enforcement authorities are not used by parties seeking to undermine worker protection laws by improperly enmeshing immigration authorities in labor disputes; and,
 - Ensure the consistent enforcement of federal labor, employment, and immigration laws.

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- Ensure federal enforcement authorities are not used by parties seeking to undermine worker protection laws by improperly enmeshing immigration authorities in labor disputes; and,
- Ensure the consistent enforcement of federal labor, employment, and immigration laws.

- The Agency has produced a new informational pamphlet, available on the NLRB website in both English and Spanish, titled “Protecting Employee Rights,” which contains an expanded discussion of an employee’s right to engage in concerted activity and other rights under the NLRA.

- The Agency maintains an interactive smart phone app, which provides information about rights under the NLRA with Agency contact information.

Ethics:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete an annual ethics briefing. Scenarios were provided that demonstrated how well-meaning federal employees could violate government ethics laws and regulations when participating in outside activities, fundraising, and speaking engagements.
- The Ethics Office developed and delivered a Job Aid that covered participation as a member of a board of directors for a non-federal organization. All employees are required to request permission from their approving official prior to accepting a position on a board. Approving Officials are directed to consult with the Ethics Office prior to granting approval. A list of information that employees must give to their approving officials was also provided.

- The Ethics Office developed an addendum that is used by all NLRB employees and Presidential Appointees to affirm that, by consenting to the recording of a presentation, the NLRB employee or official is not permitting the sponsor to use their official title or likeness to advertise or endorse the final product. This addendum is consistent with the requirement, reinforced by the Office of Government Ethics (OGE) at its latest symposium, that Executive Branch employees take reasonable steps to ensure that a third party does not misuse a government employee's position to promote their products or events.

The Ethics Staff continued to seek out opportunities to educate all Agency employees about their ethical obligations. Throughout FY 2016, the Ethics Office:

- Distributed a Speaking Engagements guidance memo to all Agency employees which provided employees with general guidance regarding speaking engagements, and explained how to distinguish between speaking in an official versus a personal capacity.
- Provided OHR with government ethics information for use in the OHR New Hire Orientation presentation, and ensured that new hires completed the Ethics Orientation module within 90 days of hire.
- Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as "prejudging" a case, and lead to requests for recusal.
- Briefed various employee groups, such as Honors Attorneys, members of the Professional Exchange Program, and summer interns.
- Developed training products, such as memos, newsletter articles and Job Aids, that covered topics including outside employment, HATCH Act, Combined Federal Campaign participation, and gift regulations.

Guidance Provided

Measure:	Goal	2016	2015	2014
Percentage of inquiries resolved within 5 business days	85%	83%	87.7%	87%
Percentage of submitted financial disclosure reports reviewed within 60-days	100%	100%	100%	100%

- During FY 2016, the Ethics Office received 844 inquiries. 737 (83 percent) were resolved within 5 business days, which is slightly below the goal of 85 percent.
 - The increase in the number of days to provide guidance is directly related to the number of cases involving board of director positions.
 - The Ethics Office identified and responded immediately to more routine matters within the targeted time frame.
 - In order to respond more quickly to more complex situations templates were developed to assist with providing consistent guidance and checklists were created to help inform about ethics obligations and to expedite responses.
- During FY 2016, the Ethics Office ensured that Public and Confidential Financial Disclosures filers completed their required reports in a timely manner, and that filers were recused from matters that caused a real or potential conflict of interest.
- All financial disclosure reports filed in FY 2016 were reviewed by the Ethics Office within 60 days. During this review, the Office confirmed that all filers had been provided appropriate ethics guidance relating to their reportable assets, outside arrangements, and outside employment activities.

Note: Review and approval of New Entrant and Annual filings (Confidential and Public) resulted in 126 memos that remind and educate filers about their reporting obligations, potential conflicts, and recusal obligations.

FOIA:**Processing Times**

Measure:	2016	2015	2014
Respond to initial FOIA requests within 20 working days	32.7 days; 36.6%	14 days; 78.34%	7 days; 91.81%
Seek a statutory extension for less than 15 percent of requests	25.4%	20%	7.08%
Respond to statutory appeals within 20 working days	32 working days	24 working days	20 working days

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of 32.7 working days for requests received from October 1, 2015 to June 30, 2016. The Agency received 2,682 requests for this period and responded to 982 of those requests in 1-20 days. Thus, 36.6 percent of the FOIA requests were processed within the 20-day statutory time period.
- The Agency sought an extension of time to process a request beyond the 20-day period in about 25.4 percent of the FOIA requests received during the fiscal year.
- The Agency received 23 FOIA Appeals from October 1, 2015 to June 30, 2016. The average elapsed days to process the appeal was 32.35 business days.

The increase in processing times correlates to the centralization. In 2014, FOIA duties were handled by Headquarters and each Regional Office by their respective FOIA Points of Contact. For uniformity and consistency in FOIA handling, it was decided to centralize FOIA processing in Headquarters, which began at the end of FY 2014. By June 2015, all FOIA requests were handled in Headquarters. The consolidation resulted in a significant increase in the amount of requests previously handled by

Headquarters. In addition, the Branch received new staff members, who required necessary training to become proficient in handling requests. There were also difficulties associated with the technology that was available to the Branch. However, the technology has been upgraded and the Branch is currently working with OCIO on making additional improvements to the technology. With the staffing and technology issues well in hand, the Agency anticipates significant improvements in processing times in FY 2017.

Internal and External Audit Responses:

Responses to internal auditors have been prepared and all deadlines have been successfully coordinated regarding the OIG audit recommendations. The OCIO and the OCFO responded completely and timely to external information requests including:

- Juniper ScreenOS and Firewall and VPN Server Data Call in Q1
- CISCO vulnerability Data Call in Q2
- Independent Financial Statement Audit

FACTORS AFFECTING AGENCY PERFORMANCE

Various factors can affect Agency performance as a whole, in addition to each goal, objective, and performance measure contained in the NLRB's strategic and annual performance plans. These factors include case intake, settlements, board member vacancies, the potential effect of case precedent and statutory changes, nationwide work-related activities by external entities, technological advances, and economic fluctuations.

CASE INTAKE

The Agency's FY 2016 case intake totals 23,863 and includes 21,326 ULP cases and 2,537 representation cases. Our Board agents effectively and efficiently process all cases that are brought to the Agency by the general public. Comprehensive and complex matters that come before the Agency are often attributable to external factors, such as: ongoing nationwide efforts to improve the wages and working conditions of workers in the retail and fast food industries; the increased prevalence and evolving tools and usage by employees of technology and social media in and outside of the workplace to discuss terms and conditions of employment with one another, and the related handbook provisions and workplace rules generated therefrom; expanded use of mandatory arbitration clauses in employment matters; bankruptcies; jurisdiction over enterprises; increased understanding of statutory application in non-union workplaces; and difficult questions concerning single, joint, and successor employer relationships, and supervisory status, as well as defining employees covered under the NLRA.

SETTLEMENTS

The initial processing and disposition of new case filings in the Regional Offices drives the intake for other stages of the casehandling pipeline. Over the past few years, more than 90 percent of those cases in which merit is found are settled without formal litigation. While the Agency has experienced outstanding success in achieving the voluntary resolution of ULP and representation cases, the settlement rate is, of course, not entirely subject to the Agency's control. When the process becomes formal and litigation occurs, Agency costs increase. The Agency calculates that every one-percentage point drop in the settlement rate costs the Agency more than \$2 million.

BOARD MEMBER TERMS

The staggering of Board member terms and the filling of a vacant seat by an individual who will not be a Board member for a full-term impairs Board productivity, as successive Board members often have to get up to speed on the same case matter. Currently, the Board is not at full composition since two vacancies caused by the expiration of Board Members' terms have not been filled.

POTENTIAL EFFECT OF STATUTORY/ RULEMAKING CHANGES

As a general matter, changes in the law affect NLRB operations and could have consequences on the Agency's case load. Rulemaking and statutory changes, for example, could lead to an increase in ULP charges and/or election petitions filed with the Agency, with corresponding increases in investigations and proceedings conducted by Agency personnel, including additional potential litigation by the Agency in the courts.

RELIABILITY OF PERFORMANCE DATA



PROGRAM EVALUATION

The NLRB uses various techniques and mechanisms to evaluate whether programs are achieving their GPRA goals and other performance targets. The Board regularly tracks the status of all of its cases to determine performance against yearly targets that support the Agency's strategic goals and measures. A standing committee composed of senior management officials, including, among others, the Deputy Chief Counsels of each of the Board Members and the Executive Secretary, meets periodically to review the status of cases, to prioritize cases, and to develop lists of cases that the Board Members will jointly focus on in order to facilitate the issuance of decisions in those cases. These representatives also report back to the Board Members on performance data and staff workload, among other issues. The Board has an electronic casehandling management system that captures all case events in a database from which case production reports are generated. The Board Members also regularly meet and communicate with each other to discuss case priorities and the overall processing of cases.

The NLRB regularly monitors settlement and litigation success rates of ULP cases. In FY 2016, Regional Offices settled 93 percent of meritorious ULP cases and won 89 percent of ULP and Compliance matters in whole or in part. A total of over \$52 million was recovered in backpay, fines, dues and fees and over 1,600 employees were offered reinstatement. The

Division of Judges closed 208 hearings, issued 204 decisions and achieved 500 settlements. The NLRB also tracks how the various circuit courts have treated the Board's cases on appeal. In FY 2016, the United States Courts of Appeals ruled on Board decisions in 121 enforcement and review cases. Of those cases, 78.5 percent were enforced or affirmed in whole or in part. As to monitoring representation cases, in FY 2016, 99.1 percent of all initial elections were conducted within 56 days of filing.

Further, the General Counsel has had an evaluation program in place for many years to assess the performance of its Regional operations. The Quality Review Program of the Division of Operations-Management reviews ULP, representation, and compliance case files annually to ensure that they are processed in accordance with substantive and procedural requirements, and that the General Counsel's policies are implemented appropriately. Those reviews have assessed, among other things, the quality and completeness of the investigative file, the implementation of the General Counsel's initiatives and priorities, Impact Analysis prioritization of cases, and compliance with Agency decisions. Additionally, personnel from the Division of Operations-Management review all complaints issued in the Regions to ensure that pleadings are correct and supported. They also conduct site visits during which they evaluate Regional casehandling and administrative procedures. In addition, to assess

the quality of litigation Committee reviews all ALJ and Board decisions that constitute a significant loss. Moreover, the Regional Offices' performance with regard to quality, timeliness, and effectiveness in implementing the General Counsel's priorities is incorporated into the Regional Directors' annual performance appraisals.

The Division of Operations-Management regularly reviews case decisions to determine the quality of litigation. Other Divisions and offices, such as the Office of Appeals, Division of Advice, Division of Legal Counsel and Office of Representation Appeals, provide valuable insight and constructive feedback on the performance and contributions of field offices. Top Agency management also meets regularly with relevant committees of the American Bar Association to obtain feedback on their members' experiences practicing before the NLRB.

In addition to the evaluation of Regional Office activities, the Office of the General Counsel monitors the litigation success rate before district courts with regard to injunction litigation. In FY 2016, the Injunction Litigation Branch received 118 cases from Regional Offices to consider for discretionary injunctive relief under Section 10(j) of the Act. The Board authorized 29 cases and Regional Offices filed 10(j) petitions in 21 cases. The "success rate", i.e., the percentage of authorized Section 10(j) cases in which the Agency achieved either a satisfactory settlement or substantial victory in litigation was 78 percent. The Office of the General Counsel continues to focus its attention on "nip-in-the-bud cases", where a nascent

organizing campaign is being unlawfully squelched, and on first outreach bargaining and successor cases, where the relationship between the employer and the union is most fragile.

As previously mentioned, while there are a few outcome-based performance measures associated with the two support goals, the majority of them are management strategy driven. The Office of Strategy and Performance Management, within the OCFO, collects quarterly performance metrics and strategies on the two Agency support goals, as well as the NxGen reports for the mission-related goals. The metrics and strategies are tracked and monitored throughout the year. On a quarterly basis the Office of Strategy and Management Performance will follow up with the points of contact that collect and submit the support goal data if any questions arise that need further clarification. The compiled data is then presented in this document.

The numbers reported for the OCIO comes from NxGen. FOIA pulls their data from the FOIA Tracking System which is a tracking, reporting and file retention system that uses Microsoft SQL server. The Ethics Office uses a spreadsheet to track when an employee reaches out to their office with an ethics inquiry. They log the question into a spreadsheet and collect several pieces of data about the inquiry to include the date that the inquiry was made and the date that guidance was provided. The spreadsheet calculates for us the number of days between the two dates.



FINANCIAL SECTION



Protecting Democracy in
the Workplace Since 1935

A MESSAGE FROM THE CHIEF FINANCIAL OFFICER

October 13, 2016



In my first year as the Chief Financial Officer of the NLRB, I am honored to forward the Fiscal Year 2016 Performance and Accountability Report. We take great pride in announcing that in FY 2016, we received an unmodified audit opinion on our financial statements. Two significant deficiencies were noted by our independent auditors in the areas of financial reporting and accounting discrepancies resulting from insufficient resources and inadequate controls over undelivered orders, accounts payable and expenditures. The NLRB concurs with this finding and my Office is developing corrective action plans to address these deficiencies.

To meet our fiscal responsibilities, NLRB dedicates itself to meeting the highest standards of reporting and transparency. This PAR provides a comprehensive review of the public funds entrusted to the agency.

In the midst of my transition to the NLRB, my focus has been on continuing the outstanding efforts of the OCFO to establish processes and controls to ensure sound financial management and leadership. From developing and updating policies for purchase card, local travel, temporary duty travel, budget formulation and execution to building an agile financial framework for providing a timely review of program execution and allocation of resources, this has truly been a year of transformation for the OCFO. The OCFO has implemented many projects and activities to gain efficiencies in a variety of functional areas, which have been discussed throughout the PAR.

The NLRB understands the importance of utilizing its resources effectively. As a result, the Agency developed a prioritized line item budget and spend plan, as well as program review mechanisms, to ensure the highest priority projects and functions are funded. All of our programs worked collaboratively to achieve significant results for the Agency. An example of this is when the OCIO worked closely with my Office, the Division of Operations-Management, Facilities and Property Branch (FPB) and Agency leadership to facilitate the transition to a Voice Over Internet Provider (VOIP) solution to save the Agency a significant amount of funds.

As we look forward into FY 2017, we face a number of short and long-term challenges. Specifically, the Independent Auditors raised concerns about the Agency's ability to establish financial and budgetary controls and processes necessary to meet its mission. In the last two years, the Agency has made progress in addressing the audit findings and establishing corrective actions plans to implement processes, procedures, and controls. Year after year, the Agency has made improvements in financial statement preparation, the reporting of internal use software, and the development of internal controls. Considering the issues raised in the recent audit, the OCFO will redouble its efforts to drive process improvement, transparency, and implementation of sound strategies to address the significant deficiencies issued to the NLRB.

The biggest challenge for the Agency will continue to be its funding levels. The NLRB's budget authority has been flat-lined at \$274.2 million for several years while Federal pay raises have been approved by Congress. Payroll has steadily increased as a result, leaving a significantly reduced level of funding for other organizational priorities and functions. Continued budget constraints and uncertainty will impact our ability to address increasing costs of operations, specifically in the area of information technology and essential services used by the field to meet mission requirements. We recognize that not every item can be funded at the same time. We will continue to improve upon our processes and strategies to ensure that the most critical programs, projects, and activities are addressed appropriately.

I look forward to continuing my efforts of collaboration and coordination with NLRB programs to provide sound advice and to develop and implement strategies to ensure ongoing refinement of organizational priorities, requirements, and controls. My efforts in the coming year will also focus on managing and addressing risks as the Agency prepares to address the challenges of today.



Mehul Parekh
Chief Financial Officer

INDEPENDENT AUDITOR'S REPORT

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

November 3, 2016

To: Mark Gaston Pearce
Chairman

Richard F. Griffin, Jr.
General Counsel

From: David P. Berry 
Inspector General

Subject: Audit of the National Labor Relations Board Fiscal Year 2016 Financial Statements
(OIG-F-21-17-01)

This memorandum transmits the audit report on the National Labor Relations Board (NLRB) Fiscal Year 2016 Financial Statements with management's comments.

The Accountability of Tax Dollars Act of 2002 requires the NLRB to prepare and submit to Congress and the Director of the Office of Management and Budget (OMB) annual audited financial statements. We contracted with Castro & Company, an independent public accounting firm, to audit the financial statements. The contract required that the audit be done in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States and Bulletin 15-02, *Audit Requirements for Federal Financial Statements*, issued by OMB.

In connection with the contract, we reviewed Castro & Company's report and related documentation and inquired of its representatives. Our review, as differentiated from an audit in accordance with generally accepted government auditing standards, was not intended to enable us to express, and we do not express, opinions on the NLRB's financial statements or internal control or conclusions on compliance with laws and regulations. Castro & Company is responsible for the attached auditor's report dated November 3, 2016, and the conclusions expressed in the report. However, our review disclosed no instances where Castro & Company did not comply, in all material respects, with generally accepted government auditing standards.

We appreciate the courtesies and cooperation extended to Castro & Company and our staff during the audit.



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Independent Auditor's Report

Inspector General
National Labor Relations Board

We have audited the accompanying balance sheets of the National Labor Relations Board (NLRB) as of September 30, 2016 and 2015 and the related statements of net cost, changes in net position, and budgetary resources for the fiscal years then ended.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with U.S. generally accepted accounting principles; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and, Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the audit considers internal control relevant to the agency's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the agency's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant estimates made by management, as well as evaluating the overall financial statements presentation. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the NLRB as of September 30, 2016 and 2015, and the related statements of net cost, changes in net position, and budgetary resources for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Independent Auditor's Report
Page 2

Required Supplementary and Other Information

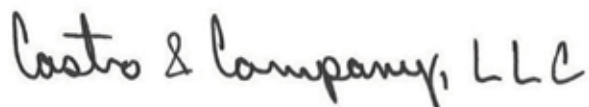
U.S. generally accepted accounting principles require that the information in the *Required Supplementary Information*, including *Management's Discussion and Analysis*, be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by the Federal Accounting Standards Advisory Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. The supplementary information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the basic financial statements. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

The information presented in the Messages from the Chairman, General Counsel, and Chief Financial Officer, list of Board Members, Other Accompanying Information, and Appendices is presented for purposes of additional analysis and are not required as part of the basic financial statements. Such information has not been subjected to auditing procedures applied by us in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

Other Reporting Required by Government Auditing Standards

In accordance with U.S. *Government Auditing Standards* and OMB Bulletin No. 15-02, we have also issued our reports dated November 3, 2016, on our consideration of NLRB's internal control over financial reporting and the results of our tests of its compliance with certain provisions of laws, regulations, and other matters that are required to be reported under *Government Auditing Standards*. The purpose of those reports is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. Those reports are an integral part of an audit performed in accordance with U.S. *Government Auditing Standards* and OMB Bulletin 15-02 in considering the NLRB's internal control and compliance, and should be read in conjunction with this report in considering the results of our audit.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.



November 3, 2016
Alexandria, VA



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Independent Auditor's Report on Internal Control

Inspector General
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB) as of and for the year ended September 30, 2016, and have issued our report thereon dated November 3, 2016. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*.

In planning and performing our work, we considered the NLRB's internal control over financial reporting by obtaining an understanding of the design effectiveness of the NLRB's internal control, determining whether controls had been placed in operation, assessing control risk, and performing tests of the NLRB's controls as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not to express an opinion on the effectiveness of the NLRB's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the NLRB's internal control over financial reporting. We limited our internal control testing to those controls necessary to achieve the objectives described in the Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*. We did not test all internal controls relevant to operating objectives as broadly defined by the Federal Managers' Financial Integrity Act of 1982 (FMFIA), such as those controls relevant to ensuring efficient operations.

Our consideration of internal control over financial reporting was for the limited purposes described in the preceding paragraph and would not necessarily identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected, on a timely basis. During our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

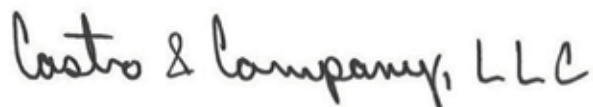
A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described below to be significant deficiencies.

Independent Auditor's Report on Internal Control
Page 2

The NLRB's response to the findings identified in our audit is described in the accompanying Audit Response Letter. The NLRB's response was not subject to auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

We noted less significant matters involving internal control and its operations which we have reported to NLRB management in a separate letter dated November 3, 2016.

This report is intended solely for the information and use of the management and the NLRB Office of Inspector General, OMB, the Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in black ink that reads "Castro & Company, LLC". The signature is written in a cursive, flowing style.

November 3, 2016
Alexandria, VA

Independent Auditor's Report on Internal Control
Page 3

SIGNIFICANT DEFICIENCIES

I. Insufficient Finance Resources and/or Personnel with Appropriate Skill Sets and Quality Control Procedures Caused Financial Reporting and Accounting Discrepancies

The Accountability of Tax Dollars Act of 2002 requires that the NLRB submit audited financial statements to Congress and the Director of OMB on an annual basis. OMB Circular No. A-136, *Financial Reporting Requirements*, defines the form and content of financial statements to be prepared by the NLRB that must also comply with Federal Accounting Standards. The statements must be prepared from an integrated financial management system containing sufficient structure, effective internal control, and reliable data. The financial reports must also be supported by comprehensive policies, with strong internal controls, that prescribe the procedures for processing and summarizing accounting entries, and preparing the financial statements.

During our testing of the NLRB's financial statement preparation and the supporting accounting transactions, we noted that improvement is needed to ensure that the NLRB can accurately produce its quarterly financial statements and perform related analyses. The errors we noted related to incorrect accumulation of account balances and incorrect postings to the accounting system. These errors occurred because of ineffective and/or inconsistent management reviews and approvals to provide assurance that transactions and adjustments were accurate and properly supported. NLRB management made the necessary adjustments to the final issued financial statements to correct the effect of these errors.

During our review of the NLRB's financial statement preparation process, we identified certain issues that impact the NLRB's ability to effectively accumulate, assemble, and analyze information presented in its financial statements in accordance with applicable guidance. The Finance Branch did not have sufficient adequate resources and personnel with appropriate skill sets and expertise to perform financial management accounting and reporting. During the course of our audit, it was not apparent that the NLRB had a process in place to cross-train personnel to perform day-to-day financial accounting, reporting, and analysis tasks, and to ensure adequate backup existed. Additionally, the Finance Branch did not have sufficient quality control procedures in place to detect certain financial reporting and accounting errors until brought to their attention by the auditors. Examples of the financial reporting and accounting errors noted include the following:

Financial Reporting

NLRB does not have sufficient resources to implement financial statement reporting requirements and sufficient controls in place to ensure that the financial statements are thoroughly prepared, reviewed, and presented in accordance with applicable OMB and Federal Accounting Standards requirements, including the following:

- The Finance Branch recorded an approximately \$400,000 journal voucher in October 2016 related to deobligating Fiscal Year (FY) 2016 obligations that: had a voucher processed for the expense, but the entire travel obligation was not liquidated; the travel obligation was approved prior to June 30, 2016, but no disbursements related to the travel obligation were processed; and funds for that were obligated for expenses related to the NLRB's fleet

Independent Auditor's Report on Internal Control

Page 4

vehicles that had not been expensed. If NLRB had been performing on-going monitoring and quarterly deobligation reviews throughout the fiscal year, those funds could have been made available earlier in the fiscal year for other critical agency needs prior to their expiration.

- Incorrect amounts were reported in the financial statements. For example, on the June 30th Statement of Changes in Net Position, the total for Net Cost of Operations for FY 2015 should have been (\$207,650,952) and not positive \$207,650,952.
- Amounts on the financial statements did not match amounts in the notes to the financial statements.
- Beginning balance amounts on the financial statements did not match ending balances from the prior year.
- Incorrect names were used for line items on the financial statements, including not incorporating changes from the October 7, 2016 update of OMB Circular A-136.

Property, Plant & Equipment

During our interim testing of the Property, Plant, and Equipment (PP&E) balances as of June 30, 2016, we noted issues related to incorrectly recorded capitalized equipment and improper review and authorization of equipment disposals, including the following:

- The NLRB incorrectly overstated furniture assets by approximately \$430,000. These assets were previously capitalized as part of the GSA Headquarters building construction contract in FY 2015. The Finance Branch recorded the assets in the accounting records a second time with a Journal Voucher, rather than simply adding the individual asset items to Oracle Fixed Asset Module. Recording the assets a second time overstated the equipment, depreciation, and accumulated depreciation balances as of June 30, 2016.
- The NLRB incorrectly retired an asset with a book value of approximately \$22,000. The Facilities and Property Branch conducted an inventory in April 2016 and determined that the asset, with an original cost of approximately \$108,000, could not be found. The lost asset was reported to the Finance Branch, which then retired the asset in May 2016. The loss of the asset was not reported to the Office of Inspector General or senior level management officials. After receiving follow-up questions from the auditor, the asset was located at an off-site warehouse.

The NLRB does not have a properly implemented process for recording the acquisition and retirement of capitalized assets, or documented procedures over its process for reporting "lost" or "not found" capitalized equipment. Finance Branch personnel are approving and recording PP&E transactions in the financial system without properly reviewing or analyzing the provided supporting documentation.

By not performing detailed management reviews to ensure that PP&E assets are properly recorded, capitalized and disposed of, the NLRB increases the risk that the PP&E balance on the financial statements can present inaccurate, misleading and/or inconsistent information. Additionally, because

Independent Auditor's Report on Internal Control
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the NLRB does not have documented procedures for the proper disposal and reporting of lost capitalized assets, NLRB management is unable to properly safeguard its assets to prevent, detect, and correct unauthorized acquisitions and disposals of the NLRB's assets. All the PP&E errors that we brought to management's attention were subsequently corrected; however, appropriate supporting procedures still need to be developed and disseminated.

Backpay

During our interim testing of the Backpay balance as of June 30, 2016, we performed a review of the Other Liabilities General Ledger account used to record fiduciary funds collected by the NLRB and held in escrow accounts with the Treasury. Backpay funds administered by the NLRB are used to provide a remedy to a discriminatee(s) when a violation of the National Labor Relations Act results in a monetary loss to a discriminatee(s) due to an unfair labor practice. The Backpay funds that are held by the NLRB are received from a charged party/respondent. The Finance Branch disburses the Backpay funds when directed to do so by a Regional Office.

As part of the Backpay interim testing, we obtained the detail listing of Backpay disbursements and selected a sample of 45 payments made during the period of October 1, 2015 through June 30, 2016. The purpose of our testing was to assess management controls and compliance with NLRB policies and procedures as well as applicable laws and regulations relative to Backpay disbursement transactions. We noted the following conditions:

- NLRB did not consistently follow its policies and procedures to evidence proper review and approval of Backpay disbursement requests: Specifically, we noted that:
 - For five (5) sample disbursements, the signed Case Settlement Agreement was not maintained on file and the Finance Branch, instead, processed the payments using the published Board Order as evidence of approval.
 - For four (4) sample disbursements, the Disbursement Request Forms were missing the appropriate approval signatures and the Finance Branch, instead, processed payment using an email as evidence of review.
 - For one (1) sample disbursement, the Recipient Information Form was missing the approval signature from the Compliance Officer.
- For each of the ten (10) Backpay cases tested, we observed that the final settlement documents were not executed in a manner that would prevent alterations.

The NLRB did not consistently follow its policies and procedures to maintain files for Backpay disbursement requests and settlement agreement documentation that were complete and properly approved. Additionally, the NLRB did not have policies and procedures to ensure the integrity and authenticity of final case settlement documents. The establishment of written, formal policies and procedures are critical to provide assurance that a system of internal controls is followed. The lack of monitoring compliance with established procedures can increase the risk of fraud, waste, and abuse occurring in processing Backpay transactions.

Independent Auditor's Report on Internal Control
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The Government Accountability Office's *Standards for Internal Control in the Federal Government* states:

People are what make internal control work. The responsibility for good internal controls rests with all managers. Management sets the objectives, puts the control mechanisms and activities in place, and monitors and evaluates the control. However, all personnel in the organization play important roles in making it happen. All personnel need to possess and maintain a level of competence that allows them to accomplish their assigned duties, as well as understand the importance of developing and implementing good internal control. Management needs to identify appropriate knowledge and skills needed for various jobs and provide needed training, as well as candid and constructive counseling, and performance appraisals.

Internal control and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.

Management designs control activities in response to the entity's objectives and risks to achieve an effective internal control system. Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks. As part of the control environment component, management defines responsibilities, assigns them to key roles, and delegates authority to achieve the entity's objectives...Control activities are an integral part of an entity's planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results...They include a wide range of diverse activities such as approvals, authorizations, verifications, reconciliations, performance reviews, maintenance of security, and the creation and maintenance of related records which provide evidence of execution of the activities as well as appropriate documentation.

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.

Management establishes physical control to secure and safeguard vulnerable assets. Examples include security for and limited access to assets such as cash, securities, inventories, and equipment that might be vulnerable to risk of loss or unauthorized use. Management periodically counts and compares such assets to control records.

Section I.A. of Office of Management and Budget Circular No. A-123, *Management's Responsibility for Internal Control*, states:

Independent Auditor's Report on Internal Control
Page 7

The control environment is the organizational structure and culture created by management and employees to sustain organizational support for effective internal control. When designing, evaluating or modifying the organizational structure, management must clearly demonstrate its commitment to competence in the workplace. Within the organizational structure, management must clearly: define areas of authority and responsibility; appropriately delegate the authority and responsibility throughout the agency; establish a suitable hierarchy for reporting; support appropriate human capital policies for hiring, training, evaluating, counseling, advancing, compensating and disciplining personnel; and uphold the need for personnel to possess and maintain the proper knowledge and skills to perform their assigned duties as well as understand the importance of maintaining effective internal control within the organization.

NLRB's *Casehandling Manual, Part Three, Compliance Proceedings*, Sections 10582.1 and 10582.2, states:

The Region should request disbursement of money held in an escrow account by submitting a Finance Branch Request to Disbursement Form with appropriate confirmations, a completed OCFO Recipient Information Form (or documentation with the same information) for each discriminatee and an Excel spreadsheet.

No backpay disbursements will be processed unless the requirements in Section 10582.1 are met.

Without adequate staffing levels, the proper skill sets, and cross-training, the Finance Branch will continue to encounter challenges in its accounting and financial reporting processes. By not adequately performing management functions specific to monitoring, analysis, and oversight, discrepancies may exist but go undetected and uncorrected, thereby causing the financial information to be misstated. Effective management oversight greatly increases the NLRB's ability to proactively identify and resolve issues that could result in misstatements in financial accounting and reporting records.

Recommendations:

We recommend that NLRB management:

1. Perform an assessment of its organizational structure to ensure that the Office of the Chief Financial Officer is adequately staffed with individuals that possess adequate experience compiling Federal financial statements and recording Federal accounting transactions, to enhance the NLRB's ability to comply with accounting and financial reporting standards. Once the assessment is completed, corrective action should be taken to address any deficiencies identified in current staffing levels or competencies.
2. Develop and provide on-going training and cross-training to NLRB staff on Federal accounting and reporting requirements to enhance NLRB's ability to compile financial

Independent Auditor's Report on Internal Control
Page 8

statements and the Performance and Accountability Report in accordance with applicable standards.

3. Develop a process for in-depth and detailed management quality control reviews of the financial statements and notes, journal vouchers, and accounting transactions to ensure they are properly and timely reported and recorded.
4. Ensure deobligation reviews are performed and documented throughout the fiscal year for all classes of transactions, including those related to travel obligations.
5. Ensure that all assets are properly recorded in the subsidiary ledger and related accounting records and depreciated in a manner that properly reflects asset, contra-asset, and expense balances.
6. Develop and implement a process to enter and track all property equipment in the Oracle Fixed Asset Module.
7. Develop and implement standardized policies and procedures to ensure accountability, monitoring, and oversight of the PP&E disposals and lost capitalized equipment, including notification to the Office of Inspector General for lost equipment.
8. Define authorities and responsible parties for managing all capitalized assets to maintain physical control in securing and safeguarding NLRB assets.
9. Review, implement, and monitor control activities related to processing Backpay transactions to ensure that policies and procedures are consistently followed.
10. Review the Casehandling Manual and establish and implement procedures to ensure accuracy and authenticity of case agreement documents.

Independent Auditor's Report on Internal Control
Page 9

II. Inadequate Controls over Undelivered Orders, Accounts Payable, and Expenditures

We continued to note issues related to the validity of Undelivered Orders (UDO) balances, primarily due to the recording of incorrect accruals. During our testing, we noted several issues surrounding the accounting for UDOs, Accounts Payable (AP), and expenditures, as summarized below:

- The results of our interim testing identified exceptions in 8 of the 26 transactions tested. We noted the following conditions:
 - Five (5) under-accruals were recorded, which understated the AP balance and overstated the UDO balance as of June 30, 2016 by approximately \$578,000. For three (3) transactions, the NLRB did not properly recognize an accrual for the entire period for which services were received. For one (1) other transaction, an incorrect formula was used to calculate the accrual amount. For one (1) additional transaction, the NLRB did not recognize an accrual for relocation services received for the Chicago Regional Office even though relocation was 100 percent complete as of June 30, 2016.
 - Three (3) over-accruals were recorded, which overstated the AP balance and understated the UDO balance as of June 30, 2016 by approximately \$337,000. For two (2) transactions, the NLRB recorded an accrual for services where invoices were received subsequent to the accrual calculation and recognized in the general ledger but were not adjusted. For one (1) other transactions, the NLRB recorded an accrual for estimated travel expenses not yet incurred when travel dates were estimated for July 2016.
- We noted instances where improvements are needed in contract administration. During FY 2016, the NLRB operated under a series of Continuing Resolutions until an Omnibus Appropriations Act was approved to provide funding from December 22, 2015, through the end of the fiscal year. We noted two instances where FY 2016 obligations incurred during the period covered by a Continuing Resolution were recorded in increments, rather than being recorded for the full amount of the obligation that was incurred. We also observed that the NLRB contracting officers created obligations of the appropriated funds without full budgetary authority and then recorded the obligations as funds were apportioned. As a result, the NLRB did not record obligations in a timely manner, and the NLRB's accounts did not accurately state the amount of available funds, nor did the accounts accurately record the amount of UDOs. Without an accurate record of the funds that have been obligated, the NLRB is at risk of exceeding the funds that have been appropriated and apportioned.

The Government Accountability Office's *Standards for Internal Control in the Federal Government* states,

Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity. Internal control serves as the first line of defense in safeguarding assets. In short, internal control helps managers achieve desired results through effective stewardship of public resources.

Independent Auditor's Report on Internal Control
Page 10

Management performs ongoing monitoring of the design and operating effectiveness of the internal control system as part of the normal course of operations. Ongoing monitoring includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions. Ongoing monitoring may include automated tools, which can increase objectivity and efficiency by electronically compiling evaluations of controls and transactions.

Management should remediate identified internal control deficiencies on a timely basis.

Transactions are promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. This applies to the entire process or life cycle of a transaction or event from its initiation and authorization through its final classification in summary records. In addition, management designs control activities so that all transactions are completely and accurately recorded.

Management clearly documents internal control and all transactions and other significant events in a manner that allows the documentation to be readily available for examination. The documentation may appear in management directives, administrative policies, or operating manuals, in either paper or electronic form. Documentation and records are properly managed and maintained.

Statement of Federal Financial Accounting Standards (SFFAS) No. 1, *Accounting for Selected Assets and Liabilities*, states,

Accounts payable are amounts owed by a Federal entity for goods and services received from, progress in contract performance made by, and rents due to other entities...When an entity accepts title to goods, whether the goods are delivered or in transit, the entity should recognize a liability for the unpaid amount of the goods. If invoices for those goods are not available when financial statements are prepared, the amounts owed should be estimated.

31 U.S.C. § 1341 states, in part, that employee of the United States Government may not make or authorize an obligation exceeding an amount available in an appropriation for the obligation.

31 U.S.C. § 1507 states, in part, that an employee of the United States Government may not make or authorize an obligation exceeding an apportionment.

31 U.S.C. § 1501 (a)(1) states, in part, that an amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of a binding agreement between the agency and another person, including an agency, that is in writing and executed before the end of the period of availability of the funds.

The NLRB did not perform a detailed review of open obligations throughout the majority of the fiscal year to ensure accrual estimates were accurate and complete, including going back after initial accruals were calculated to verify if the amount was still correct. Not performing an accurate review

Independent Auditor's Report on Internal Control
Page 11

of open obligations, expenditures, and accounts payable resulted in an under/overstatement in AP and under/overstatement in the obligations. Additionally, the financial data used to generate management and financial reports required by applicable laws and regulations was not accurate. As a result, those charged with governance did not have reliable financial information to manage Agency operations.

Recommendations:

11. Our testing results confirmed that not all of our FY 2014 audit recommendations have been properly implemented; therefore, new recommendations are not deemed necessary at this time for those matters included in the prior reports.
12. Additionally, for the issue involving recording obligations incrementally, instead of as they are incurred, we recommend that the Chief Financial Officer develop a process and guidelines to ensure that:
 - The procurement documents accurately state the obligation that is created; and
 - The entire amount of an obligation is recorded in the financial system when it is incurred.



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Independent Auditor's Report on Compliance with Laws and Regulations

Inspector General
National Labor Relations Board

We have audited the financial statements of the National Labor Relations Board (NLRB) as of and for the year ended September 30, 2016, and have issued our report thereon dated November 3, 2016. We conducted our audit in accordance with the auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*.

The management of NLRB is responsible for complying with laws and regulations applicable to NLRB. We performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts, and certain other laws and regulations specified in the Office of Management and Budget (OMB) Bulletin No. 15-02, *Audit Requirements for Federal Financial Statements*, including the requirements referred to in the Federal Managers' Financial Integrity Act of 1982 (FMFIA). We limited our tests of compliance to these provisions, and we did not test compliance with all laws and regulations applicable to NLRB.

The results of our tests of compliance with applicable laws and regulations, and government-wide policies, described in the preceding paragraph identified no instances of noncompliance that are required to be reported under *Government Auditing Standards* or OMB guidance.

Providing an opinion on compliance with certain provisions of laws and regulations and government-wide policies was not an objective of our audit, and accordingly, we do not express such an opinion.

This report is intended solely for the information and use of management and the NLRB Office of Inspector General, OMB, Government Accountability Office, and Congress, and is not intended to be and should not be used by anyone other than these specified parties.

A handwritten signature in dark ink that reads "Castro & Company, LLC".

November 3, 2016
Alexandria, VA

NLRB RESPONSE TO AUDIT REPORT

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of the Chief Financial Officer
Memorandum



November 2, 2016

TO: David P. Berry, Inspector General

FROM: Mehul Parekh, Chief Financial Officer

SUBJECT: Response to the Audit of the National Labor Relations Board Fiscal Year 2016 Financial Statements

We have reviewed the subject report and concur with the factual findings and recommendations. We appreciate the auditor's unmodified opinion and determination that our financial statements present fairly, in all material respects, the financial position of the National Labor Relations Board as of September 30, 2016.

The Office of the Chief Financial Officer (OCFO) continues to document processes and is implementing strategies to measure, manage, and mitigate risk by improving internal controls. Below is our response to the auditor's specific recommendations. A management action plan will be developed to track the progress on these recommendations.

- The OCFO will conduct an assessment of its organizational structure to ensure we have adequate resources and training to record accurate financial transactions and prepare and review financial reports, in order to enhance the NLRB's ability to comply with financial accounting and reporting standards.
- The OCFO has established a quarterly accrual methodology, and will continue to document processes and improve accuracy and timeliness of reporting obligation and accounts payable balances.
- The OCFO will collaborate with Agency stakeholders and identify responsible parties to develop, document, implement and monitor procedures for tracking, recording in the system of record, and disposing of property and equipment.
- The OCFO will review and clarify existing procedures for the Backpay disbursement process to ensure monitoring and control protocols are effective, and documentation is accurate and secured.
- The OCFO will develop a policy to ensure that contracts contain adequate terms related to funding amounts and will obligate contracts accordingly.

A handwritten signature in black ink, reading "Mehul Parekh".

Mehul Parekh, Chief Financial Officer

PRINCIPAL FINANCIAL STATEMENTS

AUDITOR'S REPORTS AND PRINCIPAL FINANCIAL STATEMENTS

National Labor Relations Board

Balance Sheets

As of September 30, 2016 and 2015 (in dollars)

	FY 2016	FY 2015
Assets:		
Intragovernmental:		
Fund Balance with Treasury	\$ 33,481,817	\$ 32,608,920
Advances and Prepayments	54,966	62,105
Total Intragovernmental Assets	33,536,783	32,671,025
Assets with the Public		
Accounts and Interest Receivable (Note 5)	580,644	66,435
Advances and Prepayments (Note 4)	39,704	36,082
General Property, Plant, and Equipment (Note 6)	10,599,628	10,653,716
Total Assets	\$ 44,756,759	\$ 43,427,258

Liabilities:		
Intragovernmental:		
Accounts Payable	\$ 3,137,289	\$ 5,177,074
Employer Contributions & Payroll Taxes Payable	4,981,491	4,617,546
FECA Liabilities	360,287	402,892
Total Intragovernmental	8,479,067	10,197,512
Liabilities with the Public		
Accounts Payable	3,558,843	1,923,396
Fed Employee Benefits - FECA Actuarial Liability	1,023,443	863,428
Unfunded Annual Leave	14,373,772	13,997,114
Employer Contributions and Payroll Taxes Payable	3,288,248	2,006,748
Contingent Liabilities	0	63,947
Total Liabilities	30,723,373	29,052,145

Net Position:		
Unexpended Appropriations	18,677,832	18,951,372
Cumulative Results of Operations	(4,644,446)	(4,576,259)
Total Net Position	14,033,386	14,375,113
Total Liabilities and Net Position	\$ 44,756,759	\$ 43,427,258

The accompanying notes are an integral part of these financial statements.

National Labor Relations Board

Statements of Net Cost

For the Years Ended September 30, 2016 and 2015 *(in dollars)*

	FY 2016	FY 2015
Program Costs:		
Resolve Unfair Labor Practices		
Net Cost	\$ 261,267,855	\$ 247,564,985
Resolve Representation Cases		
Net Cost	31,076,170	33,375,761
Total:		
Costs	\$ 292,344,025	\$ 280,940,746
Net Cost of Operations	\$ 292,344,025	\$ 280,940,746

The accompanying notes are an integral part of these financial statements.

National Labor Relations Board
Statements of Changes in Net Position
For the Years Ended September 30, 2016 and 2015 *(in dollars)*

	FY 2016	FY 2015
Cumulative Results of Operations:		
Beginning Balances	\$ (5,175,108)	\$ (10,341,523)
Adjustments:		
Correction of Errors	598,849	2,622
Beginning Balance, as Adjusted	(4,576,259)	(10,338,901)
Budgetary Financing Sources:		
Appropriations Used	272,495,326	271,251,582
Non-Exchange Revenue	(52,838)	(336,287)
Transfers In/Out without Reimbursement	(438,099)	0
Other Financing Sources (Non-Exchange):		
Imputed Financing	20,271,449	15,788,093
Total Financing Sources	292,275,838	286,703,388
Net Cost of Operations	(292,344,025)	(280,940,746)
Net Change	(68,187)	5,762,642
Cumulative Results of Operations	(4,644,446)	(4,576,259)

Unexpended Appropriations		
Beginning Balance	19,552,843	19,220,299
Adjustments:		
Correction of Errors	(601,471)	(2,622)
Beginning Balance, as Adjusted	18,951,372	19,217,677
Budgetary Financing Resources:		
Appropriations Received	274,224,000	274,224,000
Appropriations Used	(272,495,326)	(271,251,582)
Other Adjustments	(2,002,214)	(3,238,723)
Total Budgetary Financing Sources	(273,540)	(266,305)
Total Unexpended Appropriations	18,677,832	18,951,372
Net Position	\$ 14,033,386	\$ 14,375,113

The accompanying notes are an integral part of these financial statements.

National Labor Relations Board
Statements of Budgetary Resources
For the Years Ended September 30, 2016 and 2015 *(in dollars)*

	FY 2016	FY 2015
Budgetary Resources:		
Unobligated Balance, Brought Forward, Oct 1:	\$ 4,861,067	\$ 4,428,811
Recoveries of Prior Year Unpaid Obligations	3,705,771	3,861,517
Other Changes in Unobligated Balance	(1,823,942)	(3,238,723)
Unobligated balance from Prior Year Budget Authority, Net	6,742,896	5,051,605
Appropriations	274,224,000	274,224,000
Spending Authority from Offsetting Collections	0	61,815
Total Budgetary Resources (Note 14)	\$ 280,966,896	\$ 279,337,420

Status of Budgetary Resources:		
New Obligations and Upward Adjustments	\$ 275,144,463	\$ 274,476,353
Unobligated Balance, End of Year:		
Apportioned	602,325	481,752
Unapportioned	5,220,108	4,379,315
Total Unobligated Balance, End of Year	5,822,433	4,861,067
Total Budgetary Resources (Note 14)	\$ 280,966,896	\$ 279,337,420

Change in Obligated Balance		
Unpaid obligations:		
Unpaid Obligations, Brought Forward, Oct 1 (Gross)	\$ 27,746,693	\$ 28,465,715
New Obligations and Upward Adjustments	275,144,463	274,476,353
Outlays (Gross)	(271,526,544)	(271,333,858)
Recoveries of Prior Year Unpaid Obligations	(3,705,771)	(3,861,517)
Unpaid Obligations, End of Year (Gross)	27,658,841	27,746,693

Obligated Balance, Start of Year (Net)	\$ 27,746,693	\$ 28,465,715
Obligated Balance, End of Year (Net)	\$ 27,658,841	\$ 27,746,693

Budget Authority and Outlays, Net		
Budget Authority, Gross	\$ 274,224,000	\$ 274,285,815
Actual Offsetting Collections	(178,272)	(61,815)
Budget Authority, Net	\$ 274,045,728	\$ 274,224,000
Outlays, Gross	\$ 271,526,544	\$ 271,333,858
Actual Offsetting Collections	(178,272)	(61,815)
Outlays, Net	271,348,272	271,272,043
Agency Outlays, Net	\$ 271,348,272	\$ 271,272,043

The accompanying notes are an integral part of these financial statements.

NOTES TO PRINCIPAL STATEMENTS

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A. Reporting Entity

The National Labor Relations Board (NLRB) is an independent federal agency established in 1935 to administer the National Labor Relations Act (NLRA). The NLRA is the principal labor relations law of the United States, and its provisions generally apply to private sector enterprises engaged in, or to activities affecting, interstate commerce. The NLRB's jurisdiction includes the U.S. Postal Service; but other government entities, railroads, and airlines are not within the NLRB's jurisdiction. The NLRB seeks to serve the public interest by reducing interruptions in commerce caused by industrial strife. The NLRB does this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The NLRB has two principal functions: (1) to determine and implement, through secret ballot elections, free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices (ULPs), by either employers, unions, or both. The NLRB's authority is divided both by law and delegation. The five-member Board (Board) primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel investigates and prosecutes ULP charges before Administrative Law Judges (ALJ), whose decisions may be appealed to the Board and courts; and, on behalf of the Board, conducts secret ballot elections to determine whether employees wish to be represented by a union.

B. Basis of Accounting and Presentation

These financial statements have been prepared to report the financial position, net cost, changes in net position, and budgetary resources of the NLRB as required by the Accountability of Tax Dollars Act of 2002. These financial statements have been prepared from the records of the NLRB in accordance with generally accepted accounting principles (GAAP), and the form and content requirements of the Office

of Management and Budget (OMB) Circular No. A-136, *Financial Reporting Requirements*, revised as of October 7, 2016. GAAP for federal entities are the standards prescribed by the Federal Accounting Standards Advisory Board (FASAB), which is the official standard-setting body for the Federal government. These financial statements present proprietary and budgetary information.

The Balance Sheet presents agency assets and liabilities, and the difference between the two, which is the agency's net position. Agency assets include both entity assets — those which are available for use by the agency — and non-entity assets — those which are managed by the agency but not available for use in its operations. Agency liabilities include both those covered by budgetary resources (funded) and those not covered by budgetary resources (unfunded). A note disclosure is required to provide information about its fiduciary activities.

The Statement of Net Cost presents the gross costs of programs, reported by program and for the Agency as a whole.

The Statement of Changes in Net Position reports beginning balances, budgetary and other financing sources, and net cost of operations, to arrive at ending balances.

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. Recognition and measurement of budgetary information reported on this statement is based on budget terminology, definitions, and guidance in OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, dated July 1, 2016.

The Agency is required to be in substantial compliance with all applicable accounting principles and standards established, issued, and implemented by the FASAB, which is recognized by the American Institute of Certified Public Accountants (AICPA)

as the entity to establish GAAP for the Federal government. The Federal Financial Management Integrity Act (FFMIA) of 1996 requires the Agency to comply substantially with (1) federal financial management systems requirements, (2) applicable federal accounting standards, and (3) the United States Standard General Ledger (USSGL) at the transaction level. Since the Agency is not a CFO Act agency, it is not subject to FFMIA. The Agency uses the Department of Interior's financial management system and that system is FFMIA compliant. Thus, the Agency's financial management system complied with the requirements of FFMIA and produced records in accordance with USSGL at the transaction level.

The financial statements should be read with the realization that they are for a component of the United States Government, a sovereign entity. One implication of this is that liabilities cannot be liquidated without legislation that provides resources and legal authority to do so.

The accounting structure of federal agencies is designed to reflect both accrual and budgetary accounting transactions. Under the accrual method of accounting, revenues are recognized when earned, and expenses are recognized when a liability is incurred, without regard to receipt or payment of cash. The budgetary accounting principles, on the other hand, are designed to recognize the obligation of funds according to legal requirements, which in many cases is prior to the occurrence of an accrual based transaction. The recognition of budgetary accounting transactions is essential for compliance with legal constraints and controls over the use of federal funds.

The information as presented on the Statement of Net Cost is based on the programs below:

ULP Cases are initiated by individuals or organizations through the filing of a charge with the NLRB. If the NLRB Regional Office believes that a charge has merit, it issues and prosecutes a complaint against the charged party, unless settlement is reached. A complaint that is not settled or withdrawn is tried before an ALJ, who issues a decision, which may be appealed by any party to the Board and then to the courts. The Board acts in such matters as a quasi-judicial body, deciding cases on the basis of the formal trial record according to the law and the body of case

law that has been developed by the Board and the federal courts.

Representation Cases are initiated by the filing of a petition by an employee, a group of employees, an individual or labor organization acting on their behalf, or in some cases by an employer. The petitioner requests an election to determine whether a union represents, or in some cases continues to represent, a majority of the employees in an appropriate bargaining unit and therefore should be certified as the employees' bargaining representative. The role of the Agency is to investigate the petition and, if necessary, conduct a hearing to determine whether the employees constitute an appropriate bargaining unit under the NLRA.

All cases are assigned unique tracking numbers, with the letter "C" designating Unfair Labor Practices cases, and the letter "R" designating Representation cases. The percentage of new cases filed for each type of case drives the program breakout for financial reporting purposes. Please see chart below with the calculations for FY 2016 and FY 2015, through September 30.

	FY 2016	FY 2015
	Percentage	Percentage
C Cases (Unfair Labor Practices)	89%	88%
R Cases (Representation)	11%	12%
	100%	100%

C. Budgets and Budgetary Accounting

Congress annually adopts a budget appropriation that provides the NLRB with authority to use funds from the Department of the Treasury (Treasury) to meet operating expense requirements. The NLRB has single year budgetary authority and all unobligated amounts at year-end expire. At the end of the fifth year following the year of execution, all amounts not expended are canceled and returned to Treasury. Additionally, all revenue received from other sources must be returned to the Treasury.

Budgetary accounting measures appropriation and consumption of budget/spending authority

and facilitates compliance with legal constraints and controls over the use of federal funds. Under budgetary reporting principles, budgetary resources are consumed at the time an obligation to pay is made. Only those liabilities for which valid obligations have been established are considered to consume budgetary resources.

D. Financing Sources

The NLRB receives funds to support its programs through annual appropriations. These funds may be used to pay program and administrative expenses, primarily salaries and benefits, space occupancy, travel, and contractual service costs.

For accounting purposes, appropriations are recognized as financing sources, and as appropriations used at the time expenses are accrued. Appropriations expended for general property, plant and equipment are recognized as expenses when the asset is consumed in operations (depreciation and amortization).

E. Fund Balance with the Treasury

The NLRB does not maintain cash in commercial bank accounts. Cash receipts and disbursements are processed by Treasury, and the agency's records are reconciled with those of Treasury. Funds with Treasury represent the NLRB's right to draw on the Treasury for allowable expenditures.

In addition, funds held with Treasury also include escrow funds that are not appropriated but are fiduciary in nature. The fiduciary funds are not recognized on the Balance Sheet.

F. Fiduciary Activities

Fiduciary activities are the collection or receipt, and the management, protection, accounting, and investment, and disposition by the Federal government of cash or other assets in which non-Federal individuals or entities have an ownership interest that the Federal government must uphold. Fiduciary cash and other assets are not assets of the Federal government, and are therefore not recognized on the proprietary financial statements, but are reported on schedules in the notes to the financial statements. See Statement of Federal Financial Accounting Standards (SFFAS) No. 31, Accounting for Fiduciary Activities.

The fiduciary funds collected by NLRB and held in escrow represent funds that were collected as part of the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. The NLRB collects the funds, and then distributes them to employees, unions, pension funds, or other discriminatees in the settlement. The NLRB has the option to invest funds in Federal government securities, if the funds will remain in escrow for a lengthy period of time. During FY 2016, no fiduciary funds were invested.

There exists a signed Memorandum of Understanding (MOU) between the NLRB and the Treasury establishing the policies and procedures that the NLRB and the Treasury agree to follow for investing monies in, and redeeming investments held by, the fiduciary fund account in Treasury.

G. Accounts Receivable, Net of Allowance for Doubtful Accounts

Accounts Receivable primarily consists of payroll-related debts due to the NLRB from Agency employees. Accounts receivable are stated net of allowance for doubtful accounts. The allowance is estimated based on an aging of account balances, past collection experience, and an analysis of outstanding accounts at year-end.

H. General Property, Plant and Equipment

General property, plant and equipment consist primarily of telephone systems, bulk purchases, computer hardware and software, and leasehold improvements.

Personal Property. Personal property costing \$15,000 or more per unit is capitalized at cost and depreciated using the straight-line method over the useful life. Bulk purchases of large quantities of property that would otherwise fall under the individual capitalization threshold are capitalized if the total purchase is \$100,000 or more. Other property items are expensed when purchased. Expenditures for repairs and maintenance are charged to operating expenses as incurred. The useful life for this category is three to twelve years. There are no restrictions on the use or convertibility of general property, plant and equipment.

Real Property. Real property consists of leasehold improvements on GSA leased space which cost \$100,000 or more. Leasehold improvements are recorded as construction in progress until the Agency has beneficial occupancy of the space, and then the costs are moved to the Leasehold Improvements account for amortization over the remaining life of the lease.

Internal Use Software. Internal use software (IUS) includes purchased commercial off-the-shelf software (COTS), contractor-developed software, and software that was internally developed by Agency employees. IUS is capitalized at cost if the development cost is \$100,000 or more. For COTS software, the capitalized costs include the amount paid to the vendor for the software; for contractor-developed software it includes the amount paid to a contractor to design, program, install, and implement the software. Capitalized costs for internally developed software include the full cost (direct and indirect) incurred during the software development stage. The standard useful life for IUS has been established as three years, in order to most accurately match expenses with the time period in which the benefits are received from the software. The NLRB uses the straight-line method of amortization.

Internal Use Software in Development. Internal use software in development is software that is being developed, but not yet put into production. At the time the software is moved into production the costs will be moved into the IUS account and amortized accordingly, as described above. The NLRB continues to enhance a major software development project called the Next Generation Case Management System (NXGen) that replaced a number of legacy case tracking systems with one enterprise-wide system. NXGen supports the President's Management Agenda, such as for e-Gov, E-Filing, and provides the public with web-based access to NLRB data. This project has been a multiple year undertaking in which a large portion of the system was rolled out in FY 2011.

I. Non-Entity Assets

Assets held by the NLRB that are not available to the NLRB for obligation are considered non-entity assets. Non-Entity assets, restricted by nature, consist of miscellaneous receipt accounts. The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act

requests that must be transferred to the Treasury at the end of each fiscal year.

J. Liabilities

Liabilities represent the amount of monies or other resources that are likely to be paid by the NLRB as the result of a transaction or event that has already occurred. However, no liability can be paid by the NLRB absent an appropriation. Liabilities of the NLRB arising from other than contracts can be abrogated by the government, acting in its sovereign capacity.

K. Liabilities Not Covered by Budgetary Resources

Liabilities not covered by budgetary resources result from the receipts of goods or services in the current or prior periods, or the occurrence of eligible events in the current or prior periods for which appropriations, revenues, or other financing sources of funds necessary to pay the liabilities have not been made available through Congressional appropriations or current earnings of the reporting entity.

Intragovernmental

The U.S. Department of Labor (DOL) paid Federal Employees Compensation Act (FECA) benefits on behalf of the NLRB which had not been billed or paid by the NLRB as of September 30, 2016 and 2015, respectively.

Federal Employees Workers' Compensation Program

The Federal Employees Compensation Program (FECA) provides income and medical cost protection to covered federal civilian employees injured on the job, to employees who have incurred work-related occupational diseases, and to beneficiaries of employees whose deaths are attributable to job-related injuries or occupational diseases. The FECA program is administered by DOL, which pays valid claims and subsequently seeks reimbursement from the NLRB for these paid claims.

The FECA liability consists of two components. The first component is based on actual claims paid by DOL but not yet reimbursed by the NLRB. The NLRB reimburses DOL for the amount of the actual claims as funds are appropriated for this purpose. There is generally a two- to three-year time period between payment by DOL and reimbursement by the NLRB. As a result, the NLRB recognizes a liability for the actual claims paid by DOL and to be reimbursed by the NLRB.

The second component is the estimated liability for future benefit payments as a result of past events. This liability includes death, disability, medical, and miscellaneous costs. The NLRB determines this component annually, as of September 30, using a method that considers historical benefit payment patterns.

Due to the small number of claimants, the NLRB uses the methodology of reviewing the ages of the claimant on a case-by-case basis to evaluate the estimated FECA liability. The determination was made to use the life expectancy of claimants of 80 and 84 years for male and female, respectively.

Accrued Annual Leave

Accrued annual leave represents the amount of annual leave earned by NLRB employees but not yet taken.

L. Contingencies

The criteria for recognizing contingencies for claims are:

1. a past event or exchange transaction has occurred as of the date of the statements;
2. a future outflow or other sacrifice of resources is probable; and
3. the future outflow or sacrifice of resources is measurable (reasonably estimated).

The NLRB recognizes material contingent liabilities in the form of claims, legal action, administrative proceedings and suits that have been brought to the attention of legal counsel, some of which will be paid by the Treasury Judgment Fund. It is the opinion of management and legal counsel that the ultimate resolution of these proceedings, actions and claims, will not materially affect the financial position or results of operations.

Contingencies are recorded when losses are probable, and the cost is measurable. When an estimate of contingent losses includes a range of possible costs, the most likely cost is reported; where no cost is more likely than any other, the lowest possible cost in the range is reported. This item will normally be paid from appropriated funds.

M. Unexpended Appropriations

Unexpended appropriations represent the amount of the NLRB's unexpended appropriated spending

authority as of the fiscal year-end that is unliquidated or is unobligated and has not lapsed, been rescinded, or withdrawn.

N. Annual, Sick, and Other Leave

Annual and Sick Leave Program.

Annual leave is accrued as it is earned by employees and is included in personnel compensation and benefit costs. Each year, the balance in the accrued annual leave liability account is adjusted to reflect current pay rates. Annual leave earned but not taken, within established limits, is funded from future financing sources. Sick leave and other types of non-vested leave are expensed as taken.

O. Life Insurance and Retirement Plans

Federal Employees Group Life Insurance (FEGLI) Program.

Most NLRB employees are entitled to participate in the FEGLI Program. Participating employees can obtain "basic life" term life insurance, with the employee paying two-thirds of the cost and the NLRB paying one-third. Additional coverage is optional, to be paid fully by the employee. The basic life coverage may be continued into retirement if certain requirements are met. The Office of Personnel Management (OPM) administers this program and is responsible for the reporting of liabilities. For each fiscal year, OPM calculates the U.S. Government's service cost for the post-retirement portion of the basic life coverage. Because the NLRB's contributions to the basic life coverage are fully allocated by OPM to the pre-retirement portion of coverage, the NLRB has recognized the entire service cost of the post-retirement portion of basic life coverage as an imputed cost and imputed financing source.

Retirement Programs.

The NLRB employees participate in one of two retirement programs, either the Civil Service Retirement System (CSRS), a defined benefit plan, or the Federal Employees Retirement System (FERS), a defined benefit and contribution plan. On January 1, 1987, FERS went into effect pursuant to Public Law 99-335. Most of the NLRB employees hired after December 31, 1983, are automatically covered by FERS and Social Security. Employees hired prior to January 1, 1984, could elect to either join FERS and Social Security or remain in CSRS. Employees covered by CSRS are not subject to Social Security taxes, nor

are they entitled to accrue Social Security benefits for wages subject to CSRS. The NLRB contributes a matching contribution equal to 7 percent of pay for CSRS employees.

FERS consists of Social Security, a basic annuity plan, and the Thrift Savings Plan. The Agency and the employee contribute to Social Security and the basic annuity plan at rates prescribed by law. In addition, the Agency is required to contribute to the Thrift Savings Plan a minimum of 1 percent per year of the basic pay of employees covered by this system and to match voluntary employee contributions up to 3 percent of the employee's basic pay, and one-half of contributions between 3 percent and 5 percent of basic pay. For FERS employees, the Agency also contributes the employer's share of Medicare. The maximum amount of base pay that an employee participating in FERS may contribute is \$18,000 in calendar year (CY) 2016 to this plan. Employees belonging to CSRS may also contribute up to \$18,000 of their salary in CY 2016 and receive no matching contribution from the NLRB. The maximum for catch-up contributions for CY 2016 is \$6,000. For CY 2016, the regular and catch-up contributions may not exceed \$24,000. The sum of the employees' and the NLRB's contributions are transferred to the Federal Retirement Thrift Investment Board.

OPM is responsible for reporting assets, accumulated plan benefits, and unfunded liabilities, if any, applicable to CSRS participants and FERS employees government-wide, including the NLRB employees. The NLRB has recognized an imputed cost and imputed financing source for the difference between the estimated service cost and the contributions made by the NLRB and covered CSRS employees.

The NLRB does not report on its financial statements FERS and CSRS assets, accumulated plan benefits, or unfunded liabilities, if any, applicable to its employees. Reporting such amounts is the responsibility of OPM. The portion of the current and estimated future outlays for CSRS not paid by the NLRB is, in accordance with SFFAS No.4, Managerial Cost Accounting Concepts and Standards for the Federal Government, included in the NLRB's financial statements as an imputed financing source.

Liabilities for future pension payments and other future payments for retired employees who participate in the Federal Employees Health Benefits and the FEGLI programs are reported by OPM rather than the NLRB.

SFFAS No. 4, Managerial Cost Accounting Concepts and Standards for the Federal government, requires employing agencies to recognize the cost of pensions and other retirement benefits during their employees' active years of service. OPM actuaries determine pension cost factors by calculating the value of pension benefits expected to be paid in the future, and provide these factors to the agency for current period expense reporting. Information was also provided by OPM regarding the full cost of health and life insurance benefits.

As of year ended September 30, 2016, the NLRB, utilizing OPM provided cost factors, recognized \$7,008,181 of pension expenses, \$13,235,881 of post-retirement health benefits expenses, and \$27,387 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$20,271,449 as an imputed financing source to the extent that these intragovernmental expenses will be paid by OPM. In comparison, in FY 2015, the NLRB recognized \$7,490,172 of pension expenses, \$8,270,495 of post-retirement health benefits expenses, and \$27,426 of post-retirement life insurance expenses, beyond amounts actually paid. The NLRB recognized offsetting revenue of \$15,788,093 as an imputed financing source from OPM.

P. Operating Leases

The NLRB has no capital lease liability or capital leases. Operating leases consist of real and personal property leases with the General Services Administration (GSA) and commercial copier leases. NLRB leases all buildings through GSA. The NLRB pays GSA a standard level users charge for the annual leases, which approximates the commercial rental rates for similar properties. The NLRB is not legally a party to any building lease agreements, and it does not record GSA-owned properties as assets. The real property leases are for NLRB's Headquarters and Regional Offices, and the personal property leases are for Fleet vehicles and copiers.

Q. Net Position

Net position is the residual difference between assets and liabilities and is composed of unexpended appropriations and cumulative results of operations. Unexpended appropriations represent the amount of unobligated and unexpended budget authority. Unobligated balances are the amount of appropriations or other authority remaining after deducting the cumulative obligations from the amount available for obligation. The cumulative results of operations are the net result of the NLRB's operations.

R. Use of Management Estimates

The preparation of the accompanying financial statements in accordance with GAAP requires management to make certain estimates and assumptions that directly affect the results of reported assets, liabilities, revenues, and expenses. Actual results could differ from these estimates.

S. Tax Status

The NLRB, as an independent Board of the Executive Branch is a federal agency, and is not subject to federal, state, or local income taxes, and accordingly, no provision for income tax is recorded.

T. Subsequent Events

Subsequent events and transactions occurring after September 30, 2016 through the date of the auditor's opinion have been evaluated for potential recognition or disclosure in the financial statements. The date of the auditors' opinion also represents the date that the financial statements were available to be issued.

NOTE 2. FUND BALANCE WITH TREASURY

Treasury performs cash management activities for all federal agencies. NLRB's Fund Balance with Treasury represents the right of the NLRB to draw down funds from Treasury for expenses and liabilities. Fund Balance with Treasury by fund type as of September 30, 2016 and September 30, 2015 consists of the following:

<i>(in whole dollars)</i>	FY 2016	FY 2015
Entity Fund Balance with Treasury	\$ 33,481,817	\$ 32,608,920
Non-Entity Fund Balance with Treasury	52,838	336,287
Total	\$ 33,534,655	\$ 32,945,207

Fund Balance with Treasury by Fund Type:

The status of the fund balance may be classified as unobligated available, unobligated unavailable, and obligated. Unobligated funds, depending on budget authority, are generally available for new obligations in current operations. The unavailable balance includes amounts appropriated in prior fiscal years, which are not available to fund new obligations.

The obligated but not yet disbursed balance represents amounts designated for payment of goods and services ordered but not yet received or goods and services received but for which payment has not yet been made.

Obligated and unobligated balances reported for the status of Fund Balance with Treasury do not agree with obligated and unobligated balances reported on the Statement of Budgetary Resources because the Fund Balance with Treasury includes items for which budgetary resources are not recorded, such as deposit funds and miscellaneous receipts (non-entity).

Status of Fund Balance with Treasury as of September 30, 2016 and September 30, 2015 consists of the following:

Fund Balance with Treasury by Availability:

<i>(in whole dollars)</i>	FY 2016	FY 2015
Unobligated Balance		
Available	\$ 602,325	\$ 481,752
Unavailable	5,220,108	4,379,315
Obligated balance not yet disbursed	27,659,384	27,747,853
Non-budgetary fund balance with Treasury	52,838	336,287
Total	\$ 33,534,655	\$ 32,945,207

NOTE 3. FIDUCIARY ACTIVITIES

Backpay funds are the standard Board remedy whenever a violation of the NLRA has resulted in a loss of employment or earnings. NLRB holds these funds in an escrow account with Treasury and may invest the funds in market-based Treasury securities issued by the Federal Investment Branch of the Bureau of the Fiscal Service.

Schedule of Fiduciary Activity
As of September 30, 2016 and 2015

<i>(in whole dollars)</i>	FY 2016	FY 2015
Fiduciary net assets, beginning of the year	\$ 4,542,870	\$ 6,552,050
Fiduciary revenues	10,115,627	2,608,964
Investment earnings	0	0
Disbursements to and on the behalf of beneficiaries	(12,586,624)	(4,618,144)
Increase (Decrease) in fiduciary net assets	\$ (2,470,997)	\$ (2,009,180)
Fiduciary net assets, end of year	\$ 2,071,873	\$ 4,542,870

NOTE 4. ADVANCES**Intragovernmental**

Intragovernmental Advances were paid to the Department of Transportation for the employee transit subsidy program.

Non-Federal

Non-Federal Advances were paid for postage meter funding.

NOTE 5. ACCOUNTS RECEIVABLE, NET OF ALLOWANCES FOR DOUBTFUL ACCOUNTS

The FY 2016 intragovernmental accounts receivable is zero and the FY 2015 amount was zero.

The FY 2016 accounts receivable increased significantly due to the potential recovery of funds related to discrepancies in the fiduciary account, totaling \$438,099.

<i>(in whole dollars)</i>	FY 2016	FY 2015
With the public		
Accounts receivable	\$ 616,016	\$ 92,838
Allowance doubtful accounts	(35,372)	(26,403)
Accounts receivable, net	\$ 580,644	\$ 66,435

NOTE 6. GENERAL PROPERTY, PLANT AND EQUIPMENT

General property, plant, and equipment consists of that property which is used in operations and consumed over time. The table below summarizes the cost and accumulated depreciation for general property, plant and equipment.

<i>FY 2016 (in whole dollars)</i>	Asset Cost	Accumulated Depreciation / Amortization	Net Asset Value
Equipment	\$ 3,165,758	\$ 2,184,791	\$ 980,967
Construction in Progress	115,164	0	115,164
Leasehold Improvements	5,551,554	676,084	4,875,470
Internal Use Software (IUS)	34,094,533	29,493,399	4,601,134
IUS in Development	26,893	0	26,893
Totals	\$ 42,953,902	\$ 32,354,274	\$ 10,599,628
<i>FY 2015 (in whole dollars)</i>	Asset Cost	Accumulated Depreciation / Amortization	Net Asset Value
Equipment	\$ 2,774,993	\$ 1,943,110	\$ 831,883
Construction in Progress	14,605	0	14,605
Leasehold Improvements	5,347,329	134,543	5,212,786
Internal Use Software (IUS)	31,050,780	26,485,296	4,565,484
IUS in Development	28,958	0	28,958
Totals	\$ 39,216,665	\$ 28,562,949	\$ 10,653,716

NOTE 7. LIABILITIES NOT COVERED BY BUDGETARY RESOURCES

Liabilities not covered by budgetary resources represent amounts owed in excess of available congressionally appropriated funds or other amounts. The custodial liability represents court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of liabilities not covered by budgetary resources as of September 30, 2016 and September 30, 2015, is as follows:

<i>(in whole dollars)</i>	FY 2016	FY 2015
Intragovernmental:		
FECA – Unfunded	\$ 360,287	\$ 402,892
Total Intragovernmental	360,287	402,892
Estimated Future FECA	1,023,443	863,428
Accrued Annual Leave	14,373,772	13,997,114
Total Liabilities not covered by budgetary resources	15,757,502	15,263,434
Total Liabilities covered by budgetary resources	14,965,871	13,788,711
Total Liabilities	\$ 30,723,373	\$ 29,052,145

NOTE 8. NON-ENTITY ASSETS

Non-Entity assets represent miscellaneous receipts collected and accounts receivable (net of allowance for doubtful accounts). The miscellaneous receipts represent court fines and fees collected for Freedom of Information Act requests that must be transferred to the Treasury at the end of each fiscal year.

The composition of non-entity assets as of September 30, 2016 and September 30, 2015, is as follows:

<i>(in whole dollars)</i>	FY 2016	FY 2015
Non-Entity Assets		
Fund Balance with Treasury	\$ 52,838	\$ 336,287
Accounts Receivable	0	0
Entity assets	44,756,759	43,427,258
Total Assets	\$ 44,809,597	\$ 43,763,545

Additionally, NLRB received a remainder interest in Florida real estate valued at approximately \$46,000 as part of a ULP case settlement. This asset is not included in the table above.

NOTE 9. CUMULATIVE RESULTS OF OPERATIONS

<i>(in whole dollars)</i>	FY 2016	FY 2015
FECA paid by DOL	\$ (139,608)	\$ (178,288)
FECA – Unfunded	(360,287)	(402,892)
Estimated Future FECA	(1,023,443)	(863,428)
Accrued Annual Leave	(14,373,772)	(13,997,114)
General Property, Plant & Equipment, Net	10,599,628	10,653,716
Other	653,036	211,747
Cumulative Results of Operations	\$ (4,644,446)	\$ (4,576,259)

NOTE 10. INTRAGOVERNMENTAL COSTS AND EXCHANGE REVENUE

For the intragovernmental costs, the buyer and seller are both federal entities. The earned revenue is the reimbursable costs from other federal entities. The NLRB has the authority to provide administrative law judges' services to other federal entities. There is no exchange revenue with the public.

<i>(in whole dollars)</i>	FY 2016	FY 2015
Resolve Unfair Labor Practices		
Intragovernmental Costs	\$ 63,752,796	\$ 62,285,597
Costs with the Public	197,515,059	185,279,388
Total Net Cost – Resolve Unfair Labor Practices	\$ 261,267,855	\$ 247,564,985
Resolve Representation Cases		
Intragovernmental Costs	\$ 7,582,995	\$ 8,397,105
Costs with the Public	23,493,175	24,978,656
Total Net Cost – Resolve Representation Cases	\$ 31,076,170	\$ 33,375,761
Net Cost of Operations	\$ 292,344,025	\$ 280,940,746

NOTE 11. OPERATING LEASES

GSA Real Property. NLRB's facilities are rented from the GSA, which charges rent that is intended to approximate commercial rental rates. The terms of NLRB's occupancy agreements (OA) with GSA will vary according to whether the underlying assets are owned by GSA or rented by GSA from the private sector. The NLRB has OAs with GSA, which sets forth terms and conditions for the space the Agency will occupy for an extended period of time. Included within the OAs are 120 to 180 day notification requirements for the Agency to release space. For purposes of disclosing future operating lease payments in the table below, federally-owned leases are included in years FY 2017 through FY 2021.

Rental expenses for operating leases for the year ended September 30, 2016 were \$17,647,789 for Agency lease space and \$2,872,233 for Agency building security. For FY 2015 the operating lease costs were \$23,906,475 and the Agency building security portion was \$3,227,167. NLRB Headquarters moved to a new location in FY 2015, resulting in a reduction in rent costs. The rent credits realized in FY 2016 were used to offset furniture and equipment costs.

Future Space Lease Payments

<i>(in whole dollars)</i> Fiscal Year	GSA Real Property Cost
2017	\$ 23,572,526
2018	24,141,976
2019	24,728,509
2020	25,332,637
2021	25,839,290

Future Fleet Lease Payments

The future fleet payments reflect the expense for 36 vehicles used for official NLRB business throughout the United States. Expenses for the fleet vehicles for the year ended September 30, 2016 were \$117,910; for FY 2015 the costs were \$112,014.

<i>(in whole dollars)</i> Fiscal Year	GSA Fleet Cost
2017	\$ 124,230
2018	125,472
2019	126,727
2020	127,994
2021	129,273

Future Copier Lease Payments

The commercial copier rental expense reflects lease contracts for copy machines located at the NLRB Headquarters and Field Offices. For FY 2016 the commercial copier yearly contract cost is \$451,940.

<i>(in whole dollars)</i> Fiscal Year	Copier Lease Cost
2017	\$ 464,115
2018	471,094
2019	485,227
2020	499,784
2021	514,777

NOTE 12. IMPUTED FINANCING COSTS

OPM pays pension and other future retirement benefits on behalf of federal agencies for federal employees. OPM provides rates for recording the estimated cost of pension and other future retirement benefits paid by OPM on behalf of federal agencies. The costs of these benefits are reflected as imputed financing in the consolidated financial statements. Expenses of the NLRB paid or to be paid by other federal agencies at September 30, 2016 and 2015 consisted of:

<i>(in whole dollars)</i>	FY 2016	FY 2015
Office of Personnel Management:		
Pension expenses	\$ 7,008,181	\$ 7,490,172
Federal employees health benefits	13,235,881	8,270,495
Federal employees group life insurance program	27,387	27,426
Total Imputed Financing	\$ 20,271,449	\$ 15,788,093

NOTE 13. APPROPRIATIONS RECEIVED

The NLRB received \$274,224,000 in warrants for both fiscal years ended September 30, 2016 and 2015.

NOTE 14. STATEMENT OF BUDGETARY RESOURCES

The Statement of Budgetary Resources provides information about how budgetary resources were made available as well as their status at the end of the period. It is the only financial statement exclusively derived from the entity's budgetary general ledger in accordance with budgetary accounting rules that are incorporated into GAAP for the Federal government. The total Budgetary Resources of \$280,966,896 as of September 30, 2016 and \$279,337,420 as of September 30, 2015, includes new budget authority, unobligated balances at the beginning of the year, spending authority from offsetting collections, recoveries of prior year obligations and permanently not available. The amount of budgetary resources obligated for unpaid delivered and undelivered orders was \$27,658,841 for FY 2016 and \$27,746,693 for FY 2015. The NLRB's apportioned unobligated balance available at September 30, 2016 was \$602,325 and at September 30, 2015 was \$481,752.

Apportionment Categories of New Obligations and Upward Adjustments.

NLRB's new obligations and upward adjustments as of September 30, 2016 and September 30, 2015 by apportionment Category A and B are shown in the following table. Category A apportionments distribute budgetary resources by fiscal quarters and Category B apportionments typically distribute budgetary resources by activities, projects, objects or a combination of these categories. OMB does not require the Agency to separate its funding and therefore all obligations incurred were from one funding category.

<i>(in whole dollars)</i>	FY 2016	FY 2015
New Obligations and Upward Adjustments:		
Direct	\$ 275,144,463	\$ 274,476,353
Reimbursable	-	-
Total New Obligations and Upward Adjustments:	\$ 275,144,463	\$ 274,476,353

NOTE 15. RECONCILIATION OF NET COST OF OPERATIONS TO BUDGET

For the Month Ended September 30, 2016 and 2015		
<i>(in whole dollars)</i>	FY 2016	FY 2015
Resources Used to Finance Activities		
Current Year Gross Obligations	\$ 275,144,463	\$ 274,476,353
Budgetary Resources from Offsetting Collections		
Spending Authority from Offsetting Collections		
Earned		
Collected	(178,272)	(61,815)
Recoveries of Prior Year Unpaid Obligations	(3,705,771)	(3,862,167)
Other Financing Resources		
Imputed Financing Sources	20,271,449	15,788,093
Total Resources Used to Finance Activity	\$ 291,531,869	\$ 286,340,464
Resources Used to Finance Items Not Part of the Net Cost of Operations		
Budgetary Obligations and Resources not in the Net Cost of Operations		
Change in Undelivered Orders	(2,288,343)	(7,967,572)
Current Year Capitalized Purchases	(694,317)	(529,708)
Components of the Net Cost of Operations which do not Generate or Use Resources in the Reporting Period		
Revenues without Current Year Budgetary Effect		
Other Financing Sources Not in the Budget	(20,271,449)	(15,788,093)
Costs without Current Year Budgetary Effect		
Depreciation and Amortization	4,038,919	3,213,836
Disposition of Assets	0	4,051
Future Funded Expenses	270,105	(110,060)
Imputed costs	20,271,449	15,788,093
Bad Debt Expense	8,970	9,184
Other Expenses Not Requiring Budgetary Resources	(523,178)	(19,449)
Net Cost of Operations	\$ 292,344,025	\$ 280,940,746

OTHER INFORMATION



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INSPECTOR GENERAL'S TOP PERFORMANCE & MANAGEMENT CHALLENGES

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Memorandum

October 14, 2016

To: Board and General Counsel

From: David Berry 
Inspector General

Subject: Top Management and Performance Challenges

As part of the Performance and Accountability Report, the Office of Inspector General (OIG) is required by section 3516 of title 31 to summarize what the Inspector General considers to be the most serious management and performance challenges facing the Agency and briefly assess its progress in addressing those challenges. This memorandum fulfills that requirement. The information provided in this report is based upon our reviews and investigations, as well as our general knowledge of the National Labor Relations Board's (NLRB or Agency) operations.

For the purpose of this report, an item can be noted as a management or performance challenge even though it is not a deficiency or within the control of the Agency. In our prior year's memorandum, we identified seven management and performance challenges. We are retiring the challenges related to managing in the current political environment and reorganization. We are adding a new challenge related to general management.

CHALLENGES

Manage the Agency

Each year, I categorized the challenges into specific items and provided a brief explanation of the specific issues. Although this reporting method meets the statutory requirement, I am not sure that it is actually capturing an overarching management challenge.

With the exception of a few managers at Headquarters, the NLRB is generally managed by attorneys and examiners. They are generally very smart and well-intentioned public servants who time and again demonstrate a true commitment to enforcing the National Labor Relations Act. While the best of the NLRB's attorneys and examiners are often selected for key management positions, those individuals are not always effective managers or leaders.

Our audit reports and investigative activity over the last several years draw into focus a significant management challenge. In order for the Board or General Counsel, the NLRB's governance structure, to ensure that the Agency is properly managed, there must be sufficient internal controls and processes to ensure that the controls are implemented and that they are operating as intended. Our audits and investigations, however, have shown far too many instances of failures in the internal control processes at the NLRB that result from either the lack of a control, disregard for the implementation of established controls, or the failure to properly supervise employees. This lack of effective management puts at risk NLRB's ability to meet its basic mission.

Manage the Agency's Financial Resources

Both the FY 2010 and FY 2011 audits of the financial statements contained a finding by the independent auditing firm that there was a significant deficiency in internal control. Although the findings were largely related to problems in the procurement process, our audit of end-of-the-year spending demonstrated that there was a lack of sound budgeting and planning processes that are essential to proper fiscal management.

In July 2012, the Board created the Office of the Chief Financial Officer (OCFO), implementing the final recommendation of the FY 2010 audit of the financial statements. That office now oversees the budget, procurement, and payment processes.

The *Audit of the NLRB Fiscal Year 2014 Financial Statements* found both a material weakness and significant deficiencies in internal controls and the *Audit of the NLRB Fiscal Year 2015 Financial Statements* found the matter identified as a material weakness was not fully remediated and continued as a significant deficiency in internal controls.

At the end of FY 2016's first quarter, the NLRB's first Chief Financial Officer (CFO) retired. A new CFO came on board at the end of the second quarter. During the FY 2016 audit fieldwork, the matter identified as a significant deficiency was again identified as continuing to require remedial action. Also, the recommendations made in the Management Letters for the both the FY 2014 and FY 2015 audits are not yet fully implemented. Although the OCFO is working to resolve audit findings, it is apparent that significant work remains.

Manage the NLRB's Human Capital and Maintain the Agency's Institutional Knowledge

These two challenges are interrelated. The need to maintain a stable and productive workforce is key to the NLRB's ability to fulfill its statutory mission. Factors outside the NLRB's control that may directly affect its ability to maintain a stable and productive workforce include, but are not limited to reduced or flat appropriations and the loss of key personnel through retirements.

In our audit work we have, over an extended period of time, observed the loss of institutional knowledge in management practices as new personnel take over key positions. In some circumstances when information about historical practices is available, the context regarding why the practice was developed has been lost with personnel changes. The challenge is to

recruit qualified personnel who can improve management practices while understanding the NLRB's past practices.

Manage the Agency's Information Technology Security

Each year, the Office of the Chief Information Officer (OCIO) continues to devote significant resources to improving and upgrading information technology equipment and capability. In the last 2 fiscal years, the OCIO completed its migration of mission-related offices to the NxGen case processing system and began to implement a unified communications system.

The OCIO also devoted significant resources to securing and improving information technology networks. Likewise, the OIG also devotes resources to auditing, inspecting, and investigating information technology control and security issues. Despite these efforts, the Agency's information technology infrastructure and the information contained in it remain at risk because of the rapid evolution of information technology threats. Given this environment and the move to "Cloud" service providers, ensuring the security of the Agency's information in its information technology systems continues to be, and will likely remain, a long-term challenge.

Implement Audit Recommendations

In last year's Top Management and Performance Challenges memorandum, we reported that the Agency had 42 open audit recommendations. Since that time, we consolidated 12 recommendations into 1 recommendation that remains open, and we closed 15 other recommendations. To the group of 16 open prior year recommendations, we added 21 new recommendations. Of the 21 new recommendations, 4 have been closed.

At this time, there are a total of 33 open recommendations. The oldest of the open recommendations is from an audit report issued in FY 2013. A recommendation is not closed until we verify that the implementing action appropriately addressed the issue that necessitated the recommendation.

SUMMARY OF AUDIT AND MANAGEMENT ASSURANCES

I. SUMMARY OF FINANCIAL STATEMENT AUDIT

Audit Opinion: Unmodified					
Restatement: No					
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Ending Balance
	0	0	0	0	0

II. SUMMARY OF MANAGEMENT ASSURANCES

EFFECTIVENESS OF INTERNAL CONTROL OVER OPERATIONS (FMFIA §2)

Statement of Assurance: Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

COMPLIANCE WITH FINANCIAL SYSTEMS REQUIREMENTS (FMFIA §4)

Statement of Assurance: Unqualified						
Material Weaknesses	Beginning Balance	New	Resolved	Consolidated	Reassessed	Ending Balance
	0	0	0	0	0	0

IMPROPER PAYMENTS INFORMATION ACT

Pursuant to the Improper Payments Information Act (IPIA) of 2002 (Public Law No. 107-300), dated November 26, 2002, and amended on July 22, 2010 by the Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Public Law No. 111-204), and again in 2012 with the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (Public Law No. 112-248), under the Office of Management and Budget's (OMB) Circular A-123; Appendix C guidance, all agencies under the executive branch of the United States are required to comply with IPERIA.

The NLRB has only one program for budget purposes. For FY 2016, \$271,526,544 in disbursements were made, of which payroll, benefits and travel accounted for \$218,475,393, and \$31,118,130 was disbursed in the form of intragovernmental and miscellaneous payments. The NLRB paid \$21,933,021 to vendors, or about 8 percent of the total disbursements. Based on the agency's current controls, systems and continuous monitoring efforts, the NLRB concluded that the

Salaries and Expenses program is at low risk for improper payments

The NLRB is committed to minimizing the risk of improper payments and we use a variety of system controls, separation of duties, and other procedures to reduce that risk and to promptly identify any improper payments that might occur. These controls are tested as part of the SSAE 16, A-123, and financial statement audit processes; they are also considered during the annual FMFIA process.

Given these controls, we estimate the improper payments rate to be at most 1.5 percent and the improper payments amount to be no more than \$4,072,898. This level is below the threshold established by the OMB and therefore does not represent significant improper payments. The NLRB has reasonable assurance that controls over financial and non-financial operations are sufficient. No additional reporting requirements are necessary.



DO NOT PAY (DNP) INITIATIVE

The mission of the Treasury Do Not Pay (DNP) initiative is to “protect the integrity of the government’s payment process by assisting agencies in mitigating and eliminating improper payments in a cost-effective manner while safeguarding the privacy of individuals.” The NLRB echoes that sentiment and has made eliminating improper payments one of the agency’s financial management priorities. The DNP portal is a multifaceted system that embraces resources from several agency subsystems i.e. Social Security Administration’s Death Master File, GSA’s System for Award Management (SAM) Exclusion Records as well as Treasury’s Treasury Offset Program (TOP). DNP uses this network of systems in order to disseminate to agencies whom should or should not receive public funds in order to reduce or prevent the likelihood of improper payments.

In FY 2016, the DNP portal vetted 16,261 NLRB payments for authenticity and validity. The number of payments made amounted to \$33,186,414 in disbursements that passed through DNP’s network of red flag indicating systems. As a result, DNP identified 15 payments totaling \$9,039 that required further review because of a death record match. After further review, the Agency adjudicated all 15 payments and noted that the individuals who received Federal funds are deceased, but the payments were proper and paid to the decedents’ estates. DNP also identified (2) payments totaling \$203 which matched a vendor name on the Excluded Parties List (EPL). The payment was adjudicated because it was determined not to be a true match, only a matched name.

October 2015 – August 2016						
	Number (#) of payments reviewed for improper payments	Dollars (\$) of payments reviewed for improper payments	Number (#) of payments stopped	Dollars (\$) of payments stopped	Number (#) of improper payments reviewed and not stopped	Dollars (\$) of improper payments reviewed and not stopped
Reviews with DMF Public	16,261	\$33,186,414	N/A	N/A	15	\$9,039
Reviews with SAM Exclusions Public	16,261	\$33,186,414	N/A	N/A	2	\$203

- Payments reviewed for improper payments includes the total number of payments disbursed by the Agency through the PACER payment system minus any payments that were excluded from matching due to (1) a missing or unmatchable TIN (DMF only) or (2) a missing name.
- Payments stopped is currently not applicable since the Do Not Pay matching and adjudication process is based on post payment results.
- Improper payments reviewed and not stopped includes the total number of matches identified by the Do Not Pay Initiative that were adjudicated as proper by the Agency.

FREEZE THE FOOTPRINT

The Agency leases all buildings under OAs with the GSA, and as such does not provide square footage to the Federal Real Property Profile (FRPP).



APPENDICES



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APPENDIX A – ACRONYMS

AAPI	Asian American and Pacific Islander	FAA	Federal Arbitration Act
ABA	American Bar Association	FAR	Federal Acquisition Regulation
ADA	Antideficiency Act	FASAB	Federal Accounting Standards Advisory Board
ADR	Alternate Dispute Resolution	FCPIA	Federal Civil Penalties Inflation Adjustment Act
ALJ	Administrative Law Judge	FFATA	Federal Funding Accountability and Transparency Act
AMB	Acquisitions Management Branch	FISMA	Federal Information Security Management Act
AS	Administrative Systems	FMFIA	Federal Managers' Financial Integrity Act
BMS	Backpay Management System	FPB	Facilities and Property Branch
CATS	Case Activity Tracking System	FPDS-NG	Federal Procurement Data System - Next Generation
CCSLB	Contempt, Compliance and Special Litigation Branch	FPPS	Federal Payroll and Personnel System
CEP	Cultural Enhancement Program	FRPP	Federal Real Property Profile
CFO	Chief Financial Officer	FTR	Federal Travel Regulations
CLM	Contract Lifecycle Management	FY	Fiscal Year
COOP	Continuity of Operations	GAAP	Generally Accepted Accounting Principles
COR	Contracting Officer Representative	GPO	Government Publishing Office
CPAO	Congressional and Public Affairs Office	GPRA	Government Performance and Results Act
CR	Continuing Resolution	GPRAMA	Government Performance and Results Modernization Act
CWTSato	(Carlson Wagonlit) NLRB's Travel Management Service	GSA	General Services Administration
DATA Act	Digital Accountability and Transparency Act	HCPO	Human Capital Planning Officer
DCIA	Debt Collection Improvement Act	IAA	Interagency Agreement
DHS	Department of Homeland Security	IBC	Interior Business Center
DMF	Death Master File	INT	Interest Income
DNP	"Do Not Pay" List	IOC	Indicator of Compromise
DOJ	Department of Justice		
DOL	Department of Labor		
EEO	Equal Employment Opportunity		
EEOC	Equal Employment Opportunity Commission		
EVS	Employee Viewpoint Survey		

IPERA	Improper Payments Elimination and Recovery Act	OLMS	Office of Labor Management Standards
IPERIA	Improper Payments Elimination and Recovery Improvement Act	OMB	Office of Management and Budget
IPIA	Improper Payments Information Act	OPA	Office of Public Affairs
ITSM	Information Technology Services Management	OSC	Office of Special Counsel
IUS	Internal Use Software	OSHA	Occupational Safety and Health Administration
IWG	Interagency Working Group	PACER	Payments, Claims and Enhanced Reconciliation
LOA	Letters of Agreement	PAR	Performance and Accountability Report
LVER	Local Veterans Employment Representative Program	PAS	Presidential Appointees with Senate Confirmation
MD&A	Management's Discussion and Analysis	PD	Position Description
MOU	Memorandum of Understanding	PIF	Presidential Innovation Fellows
NLRA	National Labor Relations Act	QR	Quick Response
NLRB	National Labor Relations Board	SAM	System for Award Management
NxGen	Next Generation Case Management System	SBA	Small Business Administration
OA	Occupancy Agreement	SEPM	Special Emphasis Program Manager
OBIA	Oracle Business Intelligence Application	SES	Senior Executive Service
OBIEE	Oracle Business Intelligence Enterprise Edition	T&A	Time and Attendance
OCFO	Office of the Chief Financial Officer	TIC	Trusted Internet Connection
OCIO	Office of the Chief Information Officer	TIN	Taxpayer Identification Number
OED	Office of Employee Development	TOP	Treasury Offset Program
OEE0	Office of Equal Employment Opportunity	UCC	Unified Communications Contract
OFCCP	Office of Federal Contract Compliance Programs	ULP	Unfair Labor Practice
OGE	Office of Government Ethics	USPS	United States Postal Service
OHR	Office of Human Resources	VRA	Veteran's Recruitment Appointment
OIG	Office of Inspector General	WH	Wage and Hour
		WHD	Wage and Hour Division
		WHIAAPI	White House Initiative on Asian Americans and Pacific Islanders

APPENDIX B – GLOSSARY

Adjudicate: The actions of a NLRB Administrative Law Judge and the Board in making a formal judgment about a disputed matter.

Adversarial: Of a trial or legal procedure in which the parties in a dispute have the responsibility for finding and presenting evidence.

Amicus Curiae: Friend of the court.

Arbitrator: An independent person or body officially appointed to settle a dispute.

Backpay: A remedial payment made to workers for past uncompensated work performed or for work that could have been performed had the worker not been unlawfully prevented from doing so.

Case: The general term used in referring to a charge or petition filed with the Board. Each case is numbered and carries a letter designation indicating the type of case.

Certiorari: A writ or order by which a higher court reviews a decision of a lower court.

Charge: A document filed by an employee, an employer, a union, or an individual alleging that a ULP has been committed by a union or employer.

Collective Bargaining: Negotiation between organized workers and their employer or employers to determine wages, hours, rules, and working conditions.

Complaint: A document that initiates “formal” proceedings in a ULP case. It is issued by the Regional Director when he or she concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and the parties have not achieved settlement. The complaint sets forth all allegations and information necessary to bring a case to hearing before an ALJ pursuant to due process of law.

The complaint contains a notice of hearing, specifying the time and place of the hearing.

Compliance: The carrying out of remedial action as agreed upon by the parties in writing; as recommended by the ALJ in the decision; as ordered by the Board in its decision and order; or as decreed by the court.

Consented Election: A Regional Director will hold a prehearing conference to attempt to resolve bargaining unit issues and questions of voter eligibility without having to resort to a full hearing. This type of election eliminates the need for a formal hearing if all parties voluntarily reach an agreement.

Decisions: Formal judgments made by the Board and NLRB ALJs.

Deferral: Under certain circumstances, it may be appropriate for a Regional Director to hold up making a determination on the merits of a charge pending the outcome of proceedings on related matters. Such matters may be pending in the parties’ contractual grievance procedure or before the Agency or other Federal, State, or local agencies or courts.

Dismissed Cases: Cases may be dismissed at any stage. For example, following an investigation, the Regional Director may dismiss a case when he or she concludes that there has been no violation of the law, that there is insufficient evidence to support further action, or for other legitimate reasons. Before the charge is dismissed, the charging party is given the opportunity to withdraw the charge by the Regional Director. A dismissal may be appealed to the Office of the General Counsel.

Directed Election: An election which the Regional Director directs after evidence is presented at a hearing regarding the existence of questions concerning representation and the appropriateness of the bargaining unit sought by the petitioning party.

Expungement: A remedial action requiring that employee records of unlawful adverse actions be eliminated from all employment files.

Formal Action: Formal actions may be documents issued or proceedings conducted when the voluntary agreement of all parties regarding the disposition of all issues in a case cannot be obtained, and where dismissal of the charge or petition is not warranted. Formal actions are those in which the Board exercises its decision-making authority in order to dispose of a case or issues raised in a case. “Formal action” also describes a Board decision and consent order issued pursuant to a stipulation, even though a stipulation constitutes a voluntary agreement.

Gissel Bargaining Order: Gissel bargaining orders are orders to bargain with a union that may no longer have majority support because of serious employer ULPs that have prevented the conducting of a fair election.

Grievance Arbitration Procedures: The grievance and arbitration procedures are designed to provide a formal mechanism for the resolution of disputes that arise between the parties during the term of the collective bargaining agreement.

Impact Analysis: Provides an analytical framework for classifying cases so as to differentiate among them in deciding both the resources and urgency to be assigned each case. All cases are assessed in terms of their impact on the public and their significance to the achievement of the Agency’s mission. The cases of highest priority, those that impact the greatest number of people, are placed in Category III. Depending on their relative priority, other cases are placed in Category II or I.

Injunctive Relief: A temporary remedy sought in cases of egregious violations of the Act pending final action by the Board in which Counsel for the General Counsel asks a district court judge to issue an order requiring the charged party to cease and desist from engaging in violations of the Act and may also seek certain affirmative actions in order to return to status quo.

Injunctive Proceedings: The adjudicatory process by which Counsel for the General Counsel seeks injunctive relief, as described directly above, from a district court judge.

Interstate Commerce: In the U.S., any commercial transaction or traffic that crosses state boundaries or that involves more than one state. Government regulation of interstate commerce is founded on the commerce clause of the Constitution (Article I, section 8), which authorizes Congress “To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.”

Investigative Subpoena: Use of a subpoena during a case investigation to ascertain facts on which to base an initial administrative decision regarding the merits of charge allegations or jurisdictional issues.

Litigation: Trial work handled by Board attorneys in administrative proceedings and in federal court, including petitions for temporary injunctions, defending Board decisions in court, and pursuing enforcement, contempt and compliance actions.

“Make-Whole” Remedy: Providing full relief for workers adversely impacted by NLRA violations.

Meritorious Unfair Labor Practice Charge: Charge allegations evidencing statutory violations.

“Mixed-Guard” Union: A union that has both security guards and non-guards as members.

“Nip-in-the Bud” Cases: Cases arising from allegations of ULPs committed during union organizing campaigns.

Overage Case: To facilitate or simplify Impact Analysis, case processing time goals from the date a charge is filed through the Regional determination are set for each of the three categories of cases, based on priority. A case is reported “overage” when it is still pending disposition on the last day of the month in which its time target was exceeded. Cases that cannot be processed within the timelines established under the Impact Analysis program for reasons that are outside the control of the Regional Office are not considered to be overage.

P&P Committee: Practice and Procedure Under the NLRA Committee.

Petition: A petition is the official NLRB form filed by a labor organization, employee, or employer. Petitions are filed primarily for the purpose of having the Board conduct an election among certain employees of an employer to determine whether they wish to be represented by a particular labor organization for the purposes of collective bargaining with the employer concerning wages, hours, and other terms and conditions of employment.

Petitioner: The party who files a representation case petition with the Board.

Prosecutorial: Acts related to the process of litigating against a charged party when meritorious charge allegations are found.

Protected Concerted Activity: Group activity engaged in to attempt to improve working conditions, such as wages and benefits, which is protected under the NLRA.

Remedies: Cease and desist and affirmative relief, such as reinstatement and backpay, sought to resolve ULPs and to return to the status quo before violations occurred.

Reinstatement: To return an employee, who was unlawfully discharged, back to work in his or her former position.

Representation Cases: A case initiated by the filing of a petition—by an employee, a group of employees, a labor organization acting on their behalf, or in some cases by an employer.

Secret-ballot Elections: A voting method in which voter's choices in an election are anonymous.

Settlements: A resolution between disputing parties about a case, reached either before or after court action begins.

Sua Sponte: A Latin phrase describing an act taken on a party's own initiative without formal prompting from another party.

Social Media: Various online technology tools that enable people to communicate easily via the Internet to share information and resources. These tools can encompass text, audio, video, images, podcasts, and other multimedia communications.

Status Quo: A Latin phrase meaning the existing state of affairs.

Statutory: Required, permitted, or enacted by statute.

Stipulated Election: The parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent.

Taft-Hartley Act: The Labor Management Relations Act, better known as the Taft–Hartley Act (enacted June 23, 1947) is a United States federal law that restricts the activities and power of labor unions. The Taft–Hartley Act amended the NLRA, informally the Wagner Act, which Congress passed in 1935.

Temporary Injunction: A court order prohibiting an action by a party to a lawsuit until there has been a trial or other court action, the purpose of which is to maintain the status quo and preserve the subject matter of the litigation until the trial is over.

Unfair Labor Practice: A ULP is conduct by either a labor organization or an employer that violates the NLRA.

Union: A labor organization formed with stated goals of protecting the rights and interests of workers.

Withdrawals: Case resolution resulting from a charging party or petitioner deciding to withdraw the filing of an ULP charge or a representation case petition.

APPENDIX C – HISTORICAL PERFORMANCE MEASURES

HISTORICAL PERFORMANCE MEASURES FOR GOALS 1 AND 2

Close meritorious (prosecutable) ULPs on compliance within 365 days of the filing of the ULP charge.

Year	Interim Goal	Actual Performance
FY 2011	80.2%	83.2%
FY 2012	80.3%	83.8%
FY 2013	82.0%	82.4%

Resolve all charges of ULP cases by withdrawal, by dismissal, or by closing upon compliance with a settlement or Board order or court judgment within 120 days of the filing of the charge.

Year	Interim Goal	Actual Performance
FY 2011	71.2%	72.5%
FY 2012	72.0%	72.7%
FY2013	72.0%	73.3%

Resolve questions concerning representation in all representation cases within 100 days from the filing of the representation case petition.

Year	Interim Goal	Actual Performance
FY 2011	85.0%	84.7%
FY 2012	85.2%	84.5%
FY2013	85.2%	87.4%

HISTORICAL PERFORMANCE MEASURES FOR GOALS 3 AND 4

FY 2014 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies

Objective 1: Initiative 1

- The Division of Administration (DofA) established a Human Capital Planning Section (HCPS) to administer the Agency's human capital management program.
- Office of Human Resources (OHR) partnered with OPM's Human Resources Solutions to pilot "USA Performance", a newly developed automated web-based performance appraisal system tool. It is designed to streamline the manual performance management process and increase visibility and transparency in performance management process. The use of USA Performance aligns performance plans with strategic goals, and ensures compliance with Federal performance management regulations.
- OHR meets regularly with Headquarters and field managers to assist in collaborative efforts with employees and the unions on a variety of workplace issues such as maxiflex, telework, and performance management programs.
- DofA's Security branch was successful in reducing the reinvestigation backlog to approximately 750 from 1,018. The Agency expects the office to remain on target to complete the 20 percent goal, listed in the management strategies, next year.
- The DofA's Office of Employee Development (OED) expanded Skillport training software; electronically organized its developmental resources for Field Agents, including instructor modules, videos narrative resources; developed prototypes and piloted user-friendly online training for board agents; provided teambuilding to consolidated regions; and presented a 12-hour course on the "Seven Habits of Highly Effective People" to new Regional directors and a 90 minute workshop on "Promoting a Culture of Personal Accountability" that dealt with how to motivate people to take ownership of their work, an important skill for managing teleworkers.

Objective 1: Initiative 2

- OHR began developing a Quality Assurance and Quality Control Unit to assess and improve the accountability process. The following action steps will be taken as a result of OPM's hiring reform:
 - Evaluate current designated examining authority and merit promotion hiring timeframes;
 - Identify the impact of negotiated agreements on hiring timelines;
 - Analyze and recommend methods for measuring improvement in timeliness;
 - Develop a schedule to meet hiring timeliness;
 - Identify actions needed to address barriers;
 - Prioritize occupations within respective divisions;
 - Train OHR staff on all tools available through USA staffing.
- OHR has begun working with stakeholders to standardize over 1,300 of the Agency's position descriptions.
- The Agency's Office of Equal Employment Opportunity (OEEO) timely submitted the Agency's annual MD715 report for Fiscal Year 2013 to the EEOC, which provides a demographic analysis of the Agency workforce by gender, race, national origin, and disability, in all stages of employee life (e.g., hiring, grade level distribution, training, promotions, separations).
- OEEO also provided a State of the Agency report to senior leadership to assist with strategies and enhance the diversity of its workforce.
- OEEO and OHR initiated a collaborative work group to develop a Strategic Recruitment Plan for the Agency. As part of the plan, OEEO posted to its web page recruitment resources for reaching out to diverse student populations of African American, Hispanic, Asian American and Pacific Islander, and Native American populations. It also sent out email communications to these resource organizations promoting recruitment through the Agency's Honors Attorneys program. OEEO is also developing the Special Emphasis Program Manager role for each of these populations, as well as for disabled employees and veterans, to enhance the Agency's outreach initiatives to these communities.
- The Agency hired a new Disability Coordinator, who maintains applications for applicants that have contacted the Agency to be considered for employment under the "Schedule A" Hiring Authority, and OHR plans to host a number of

training presentations for managers and supervisors on "Schedule A" Hiring, as well as on the Selective Placement Program.

Objective 2: Initiative 1

- DoFA's Security Branch made improvements to its web pages, such that employees can find a host of information on physical security, personnel security, continuity of operations, classes offered by Department of Homeland Security, and policies from the Interagency Security Committee, and OPM Federal Investigative Service. Further, an Administrative Policies and Procedures Manual (APPM) on Personnel Security was updated and published and one on Physical Security is in draft form.
- DoFA's FPB developed an extensive Communication Plan that continues to inform employees about the Headquarters relocation, including managing expectations related to the cultural transition to a reduced-space work environment, and it provided physical tours. The project, which is dubbed, "Total Workplace Solutions," also includes a web page devoted to all aspects of the new relocation including timing, neighborhood businesses, furniture, technology and other requirements.
- In addition, the FPB established a Headquarters Space Advisory Committee, which includes representatives from all Divisions and both employee Unions, to communicate updates on the new Headquarter Space Initiative and keep employees throughout the workforce informed on the latest project information.
- HCPS launched a Human Capital web page in order to provide a platform to distribute a wealth of information and guidance about NLRB's human capital planning efforts.
- HCPS received and analyzed the 2013 Federal Employee Viewpoint Survey results and provided an executive level briefing to Senior Management and is in the process of doing the same with the recently published FY 2014 FEVS results.
- OHR developed the Honorary Awards program, where a number of employees were acknowledged during an awards ceremony, and it implemented a regular schedule for providing service awards.

Objective 2: Initiative 2

- OHR benchmarked other agencies to identify ways to improve the on boarding program, and, along

with Senior Managers, revamped the Agency's on-boarding process.

- OHR provided one-on-one and group instructions to managers to assist them in providing guidance in understanding their role in communicating expectations to Agency employees on performance management.
- The former Director of Administration produced a quarterly Significant Happenings Report to report the work of the employees within the Division to senior management, and planned a Division-wide Recognition Day to celebrate the work of the Division and foster camaraderie, which was attended by the General Counsel, Deputy General Counsel, Assistant General Counsel, and Board Members.

Objective 2: Initiative 3

- The following policy statements were released to Board agents in 2014: Equal Employment Opportunity Policy Statement; Policy Statement on the Prevention of Unlawful Harassment, Including Sexual Harassment; Alternative Dispute Resolution (ADR) Policy Statement; and the Diversity and Inclusion Policy Statement.
- The MD-715 was timely submitted electronically in first quarter of 2014 calendar year to the EEOC providing FY 13 information.
- The NLRB offered Agency-wide diversity training, which was mandatory for managers and supervisors, on Transgender in the Workplace in 2012, made the sessions available on the OED website, and issued a related Agency-wide memo.
- With encouragement from senior leadership, the OEEEO, OHR, and OED have partnered to develop a more robust diversity and inclusion training program. In furtherance, of this goal, senior leaders and representatives from various divisions have attended and accessed external programs.
- In 2003, the Agency established a mentoring program on the General Counsel-side for newly-hired and newly-transferred professionals and support staff in order to support the mandate that the Agency have workforce that reflects the diversity of our Nation. In FY 2014, the General Counsel asked that the program be revamped and the Mentoring Committee is working on doing so, including exploring best practices in mentoring at other federal agencies.
- The OEEEO relies on the Agency's cadre of collateral duty Special Emphasis Program Coordinators

(SEPCs) to assist the Agency in its efforts to build and maintain an inclusive work environment. OEEEO conducted four-one hour videoconference training sessions in 2013 and 2014. The training supports the SEPCs in carrying out their responsibilities and duties and also provides a forum to share ideas and best practices.

- OHR has educated and encouraged management to utilize the Local Veterans Employment Representative Program to recruit for various positions. As a result, the Agency has hired at least eight veterans through the program.

FY 2014 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Objective 1: Initiative 1

Measure:

- The Agency's enterprise case management system, Next Generation Case Management System (NxGen), was made to replace 11 separate legacy systems and integrate into a single unified solution that leverages multiple technologies.

NxGen presently manages:

Internal users	1,350
Cases	263,355 (+10%*)
Case Actions of the Agency	766,343 (+27%*)
Documents, images, and videos,	
each linked to its Action and Case	4,678,794 (+47%*)

* All percentages are year-over-year calculations

Measure:

- The Agency soon will complete the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch (CCSLB), will be migrated into NxGen beginning in the first quarter of FY 2015.

Measure:

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. The pilot recently has been expanded to two document types for all Regions. To date, 2,101 documents have been sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.

[10/1/2013 – 9/30/2014]

Number of E-Filings Received	29,127 (+15%*)
Number of Documents Received	43,031 (+13%*)
Number of Board and ALJ Decisions E-Served	737
Total Number of parties E-Served Decisions	55,191 (+3%*)
Number of E-Deliveries of Case Documents	2,101 (new process)

* All percentages are year-over-year calculations

Measure:

- The NLRB is committed to achieving the goals set forth in the President's Open Government Directive. The three principles of transparency, participation, and collaboration inform current and future plans for the Agency's information systems. With the near complete implementation of the NxGen, the Agency is able to provide improved information regarding its cases and significantly increase the number and type of case documents made available to the public. In FY 2014, the Agency also made substantial progress towards a new external search interface and public data warehouse that will continue to deliver on the goals of Open Government.

Number of NLRB Document Types Available for Public Access	197
Total Number of Case Documents Available for Public Access	346,109

Please see <http://www.nlr.gov/open/public-documents> for a list of the document types available to the public.

Objective 1: Initiative 2**Measure:**

- In FY 2013, the Agency made the decision to expand the capabilities of the Office 365 Suite and utilize the cloud-based SharePoint offering. The Office 365 SharePoint solution provides all of the necessary components of a technology service catalog and complements the existing Intranet. In FY 2014, the Agency's governance and development teams focused on streamlining business processes through forms automation with workflow and routing.
 - As an example of these efforts, and to support the Agency's new Collective Bargaining Agreement, the Administrative Systems team recently completed the development of and is piloting a comprehensive solution to automate the processes for requesting, routing and approval, and reporting for the following schedules: Telework, Alternate Work (e.g., Gliding Flex, Maxi Flex and 5-4-9), and Leave.

Measure:

- Currently, the Agency utilizes disparate networks for its data and video conferencing services and manages 52 legacy phone systems from different voice service providers in the Field and Headquarters. The segregation of data, voice, and video services results in an inefficient use of Agency resources and creates communication and collaboration silos within critical business processes. Additionally, the Agency's present communications infrastructure provisions remote access for certain business processes only to Agency laptops, with limited support for mobile and tablet devices.

- The objectives of the Agency's Unified Communication and Collaboration (UCC) effort are to provide enhanced functionality to Agency staff while achieving cost savings through such strategies as consolidating networks and taking advantage of lower cost technical alternatives and contract vehicles. Specifically, the Agency is trying to create a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road. The Agency awarded a UCC contract on September 24 and the Agency expects the implementation to take between eight and 12 months. After the initial investments in the UCC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.

Measure:

- With the increasing requests for collaboration, the Agency embarked upon efforts to implement SharePoint team sites to manage the need for document collaboration, discussion forums, wiki pages, and site mailboxes. Team sites are being created for all departments and divisions so that each office will have a secure place to store documents, create conversations, receive email alerts when changes occur, and collaborate on work products. Additionally, individual team sites are being created to support the various needs of the Agency. For example, to assist with the reduction of printed materials for conferences, team sites were created to review/edit presentations and conference materials and then store all materials to be made available to the participants. Furthermore, the Agency is addressing the need for document collaboration by geographically dispersed employees by providing access to the Office Online applications. This allows multiple employees the ability to simultaneously work on Word, Excel and PowerPoint documents, which provides increased collaboration and avoids confusion with managing multiple versions of documents that then need to be merged together.

Objective 1: Initiative 2

Measure:

- All required reports to external regulatory bodies were prepared in accordance with established time lines.

Measure:

- OCFO has developed a formalized annual training plan for all allowance holders. During FY 2014, finance-related training was held as part of the Office Managers and Field Managers trainings. Topics included Oracle Federal Financial processes, eTravel processes, and Federal Travel Regulations.

Measure:

- The OCFO Budget office has worked closely with the program offices and NLRB Senior Leadership to develop a detailed budget spend plan which serves to inform NLRB management for decision making.

Measure:

- During FY 2015 OCFO Finance Office plans to communicate obligation status reports to program offices through an automated monthly email. The development of the report has been completed within FY 2014 and the automated email generation will begin in FY 2015. This report will help program managers to monitor their budgets at a more detailed level.

Measure:

- The Contracting Officers as well as the purchase card holders utilize the General Services Administration's (GSA), Federal Strategic Sourcing Initiative (FSSI) in the ordering of supplies and services. By doing so, the NLRB has increased its utilization of strategic sourcing from a savings rate of 14.47 percent in FY 2013 to 18 percent. In FY 2014, the NLRB increased its utilization of strategic sourcing higher with a savings rate of 34 percent; yielding a savings of \$106,168.

Measure:

- As demonstrated in the chart below, the NLRB increased the percentage of contract awards to small, disadvantaged owned businesses from FY 2012 to FY 2013 in all categories. During FY 2014, the NLRB awarded the Unified Communications contract almost \$2M to a large business which impacted the small business categories. The Acquisition Management Branch will focus on making small businesses the supplier of choice in FY 2015.

FISCAL YEAR	TOTAL SMALL BUSINESS	WOMAN OWNED	SMALL DISADVANTAGED	VETERAN OWNED
FY 2012	31.3%	7.9%	12.3	3.9%
FY 2013	34.2%	17.9%	7.4%	4.9%
FY 2014	29.1798%	12.4208%	10.1716%	4.4219%

Objective 2: Initiative 1**Management Strategies:**

- The Agency formed an outreach committee, comprised of board agents from divisions, branches and offices throughout the Agency. The committee continues to explore new modes and methods to educate the public, particularly those, such as youth and immigrant populations, that may be unfamiliar with the Agency and the Act and may be more vulnerable to exploitation due to their lack of knowledge of workplace rights.
- In order to educate more audiences through non-traditional outreach, particularly those prone to exploitation, the Agency is trumpeting successes and recent cases of interest, as well as including human interest stories, so that the public can more easily relate to the information being shared. The CPAO is issuing news releases of recent cases, such as Board and court decisions, settlement agreements, and cases involving injunctive relief or compliance.
- The Agency is invigorating local relationships for joint outreach and local working group forums where there are regular meetings with board agents from other agencies to work on various joint projects/materials. These federal, state and

local agencies include, but are not limited to, EEOC, local Human Rights Commissions, Wage and Hour, OSHA, Whistleblower, Unemployment Compensation, and Office of Special Counsel.

- As to Letters of Agreement (LOA), the Agency is continuing efforts to reach out to foreign embassies/ministries/consulates and finalize letters of agreement for education of workers and business owners. In FY 2013, the Agency executed a LOA with the Mexican embassy and selective consulates, and in FY 2014, with the Ministry of Ecuador. Efforts to parlay those national agreements into local agreements between Regions and consulates, and to provide materials to Regions for assistance with education per the LOA are ongoing.
- The Agency is culling and editing current outreach materials so that Board Agents have presentations with a uniform brand for Powerpoints and other formats in a central repository for use nationwide.

Objective 3: Initiative 1**Measure:**

- Over the past year, the Chairman and General Counsel have jointly promoted several ethics program initiatives to all employees and visibly participated in the values-based training program presented in FY 2014. The training engaged employees in discussions of ethical decision making principles and considered how ethical decisions are made within the context of our own personal core values and those of the Agency. The training also stressed personal responsibility in the ethical decision making process.
- The General Counsel and Chairman also increased the staff of the Ethics Branch to ensure that sufficient resources are devoted to the program to facilitate effective program management and outreach to all employees.
- The NLRB Ethics Staff have met with the Board Members and the General Counsel collectively and separately to discuss a range of government and legal ethics issues.

- The NLRB's Designated Agency Ethics Official has full access to Agency leadership and can approach them for assistance when the need arises.
- In addition, the combining of the NLRB's Legal Ethics Program with the Government Ethics Program has provided NLRB employees with a cohesive, comprehensive program, thus raising the visibility of the program among employees. Employees now know that they have one office where they can go with ethics questions and issues, where their questions will be addressed from the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

Measure:

- The ethics staff was proactive in expanding the number of training products available to all NLRB employees. They developed a number of one-page, easy-to-read Job Aids designed to help employees identify potential government ethics issues and provide additional guidance where informational gaps might exist. The Job Aids focused on conflicts of interest, including both financial conflicts and appearance issues; the acceptance of gifts from outside sources; the acceptance from and the giving of gifts to coworkers; the Hatch Act; outside employment; the outside practice of law; and the government's 14 Principles of Ethical Conduct. The Chairman and General Counsel promoted the usefulness of the Job Aids and identified them as a valuable tool for promoting an ethical culture at the NLRB in a memo to all NLRB employees. Job Aids on legal ethics topics have been prepared as well.
- The Ethics web page on the NLRB's Intranet was revamped and rebranded as the "Ethical Highway." Thru the web page, ethics guidance materials are readily available to all NLRB employees. Articles on ethics appear monthly in the NLRB's employee newsletter, the All Aboard, alternating between legal ethics topics and subjects involving the government's rules and regulations. Monthly tips on legal ethics ("On the Road with the Ethics Code") are issued to the NLRB's Field Offices, and each Region has an ethics coordinator who assists in promoting them.
- The New Employees Ethics Orientation has been converted to an online module in the Agency's learning management system and is assigned to new employees as part of the on-boarding process. Completion of the module can be tracked within the system. This ensures that all new employees receive an orientation to the government's ethics rules and regulations and provides a brief overview of the screening wall that separates the adjudicatory and prosecutorial sides of the Agency. Forty-seven new employees were trained in FY 2014. The module has also been packaged as a refresher course for incumbent employees, which they can access anytime through the same system.
- The Ethics Staff provided in-person briefings on both government and legal ethics to the Agency's summer student interns, student volunteers, and detailees, and will continue to provide briefings at Agency conferences where they can reach large, diverse audiences. In August 2014, an ethics presentation was provided at the NLRB Regional Management Conference in Washington, DC. During the latter portion of FY 2014, the Ethics Staff introduced two ethics training initiatives. In June, they began a new legal ethics training program for attorneys and field examiners in the NLRB's Field Offices that covers skip counsel issues and attorney-client privilege. During the course, Agency employees complete a "Testing Your Knowledge" quiz to test their knowledge in these areas.
- In September, the Ethics Staff launched a training campaign for all Agency employees on the benefits and pitfalls of using email in the NLRB's casehandling process. This training is being presented in weekly broadcasts and uses a variety of delivery methods, such as webcasts, podcasts, and job aids, to convey information. The Chairman and General Counsel promoted the program to employees prior to the launch of the campaign which helped to raise awareness of the importance of the training. The training campaign began in September and will conclude in December 2014. In addition, each weekly segment will be posted on the "Ethical Highway" page of the NLRB Insider after its initial broadcast.

Measure:

- As of September 30, 2014, 87 percent of ethics inquiries were resolved within 5 business days. Of the 557 inquiries received from November 14, 2013 through September 30, 2014, 447 required guidance memos that addressed the inquiry from

the perspective of the government's ethics rules and, for attorneys, within the parameters of their bar rules.

Measure:

- As of September 30, 2014, 100 percent of the financial disclosure reports received were reviewed and certified within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

Measure:

- The NLRB uses an electronic financial disclosure system, FDOOnline, for the filing and review of the Confidential Financial Disclosure Reports which are filed by designated employees within the Agency.
- While FDOOnline contains a component for filing Public Financial Disclosure Reports (OGE Form 278), the NLRB's Designated Agency Ethics Official decided to wait to require the electronic filing of public reports until after the Office of Government Ethics unveils the new electronic system it is currently testing. Until such time as that system is made available for use, Public Financial Disclosure Reports are still filed in paper copy, even though filers are encouraged to use the online, fillable version of the OGE Form 278 developed by the Office of Government Ethics.

Objective 3: Initiative 2

Measure

- Responses to internal auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response. The OCIO responded completely and timely to internal audits and information requests, including:
 - Audit of the NLRB Fiscal Year Financial Statements
 - Audit of FY 2013 Sequestration – Preparation, Implementation, and Impact
 - Cloud Computing Audit
 - Federal Managers' Financial Integrity Act (FMFIA)

Objective 3: Initiative 3

- Responses to external auditors have been prepared and all deadlines have been successfully coordinated with auditors. There are no outstanding requests that need an agency response.
- The CFO participated in the GAO's Regulatory Cost Benefit Analysis (GAO 451043).
- The OCIO responded completely and timely to external information requests, including:
 - Questions posed in the Office of Management and Budget Memorandum M-14-04, Fiscal Year 2013 Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management
 - The quarterly requirements for FISMA, Trusted Internet Connection (TIC), and Senior Agency Official for Privacy (SAOP) reporting
 - Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
 - NARA's Annual Records Assessment and the OMB Records Directive (M-12-18) Report
- The OCIO responded appropriately to external technology mandates, including:
- Having successfully consolidated its infrastructure, the Agency is taking full advantage of cloud computing's benefits (Cloud First, Federal Cloud Computing Strategy) to maximize capacity utilization, improve IT flexibility and responsiveness, and minimize cost. Current efforts include utilizing:
- Microsoft's cloud-based, software and platform as services solutions, Office 365 and Azure for:
 - Email repositories and services; the Agency repurposed the nearly one million dollar investment in its email infrastructure to extend the lifespan of its NxGen on-premises infrastructure
 - Replacing its end-of-life collaboration platform with Microsoft's SharePoint solution
 - Supplanting its near end-of-life network attached storage and desktop backup with Microsoft's Office 365 One Drive for Business solution

- Amazon's Elastic Compute Cloud to:
 - Host its NxGen case management development environment
 - Save approximately \$500,000 over the next 6 years by hosting its legacy Momentum financial data rather than accepting the proposal of the Department of the Interior's (DOI) Interior Business Center (IBC)
- The ServiceNow cloud Information Technology Services Management (ITSM) platform, which the OCIO uses to be more transparent, provides Agency staff with multiple ways to get quality support, and as the technology enabler of its internal effectiveness initiatives
- GovDelivery cloud services to deliver all case participant communications, including for its electronic services initiative.
- The Agency was acknowledged for having achieved compliance with OMB's TIC Initiative, version 2.0. As such, it is one of a few small civilian agencies that have complied with this mandate

Objective 3: Initiative 4

Measure:

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of seven days for requests received from October 1, 2013 to September 30, 2014. The Agency received 4,458 requests for this period and responded to 4,093 of those requests in 1-20 days. Thus, 91.81 percent of the FOIA requests were processed within the 20- day statutory time period.

Measure:

- The Agency sought an extension of time to process a request beyond the 20-day period in 7.08 percent of the FOIA requests received during this time period.

Measure:

- The Agency received 20 FOIA Appeals from October 1, 2013 to September 30, 2014. The average elapsed days to process the appeal was 22 working days. In 9 of the 20 FOIA appeals, a final determination was made within 20 working days. Two of the appeals received during this period were pending as of September 30, 2014.

FOIA centralization is underway and will be expanding in the coming months. Centralization of FOIA processing will ensure greater consistency and efficiencies in FOIA handling. In August, the NLRB's FOIA Branch hired a new Branch Chief, who has provided assistance towards full centralization of the processing of Regional FOIA requests.

FY 2015 Strategic Goal 3 (Support): Achieve Organizational Excellence

Management Strategies:

Objective 1: Initiative 1:

- The Office of Human Resources (OHR) collaborated with executive officials to refine and expand its performance management program. It held training sessions for Executive staff, Regional staff and Headquarters managers and supervisors on relevant areas of the performance management system. The training focused on the significance of establishing performance plans, providing timely mid-year progress reviews, ensuring that all employees are given appraisals, aligning performance plans with the Agency's strategic goals, and ensuring that performance plans hold employees accountable for achieving results appropriate to their level of responsibility.
- A comprehensive Strategic Human Capital Plan is being developed.
- OHR and the Division of Legal Counsel collaborate regularly to ensure adherence to Agency policies and collective bargaining agreements.
- Management and union representatives successfully work on a Reasonable Accommodations Policy, which was approved by the EEOC.
- OHR issued guidance that expounded on workplace flexibilities for childbirth, adoption, foster care and elder care.
- OHR, on behalf of various NLRB organizational units, issued many recognition awards to employees during FY 2015, including length of service, project and retirement awards.
- OHR held its annual Administrative Professional Day Recognition Ceremony on April 23, 2015 to honor the Agency's outstanding administrative professionals.

- The Agency held its second annual Honorary Awards Program, which recognized eleven employees in a number of different categories.
- The Agency developed and implemented an Agency-wide Cultural Enhancement Program, which will enhance the ability of our increasingly diverse workforce to better work together, and to better understand the cultural differences among the public we serve. The program was launched with holding an “all hands” meeting which featured internal and external speakers who addressed the importance of inclusion and civility to a productive workplace. This was followed by online interactive module and podcasts in which a diverse group of employees shared their life and work experiences, as well as videos and online forums for employees to continue to discuss these topics.
- The Office of Employee Development (OED) also developed and rolled out online training materials, enabling Headquarters employees to better utilize Outlook 2013, Lync and Word 2010, and produced scenario-based videos on ethics topics.
- OED updated the Agency’s Management Training Program by developing components such as: enhanced individual development planning and mentoring; obtaining the skills needed for the next level of management; and a pre-supervisory program.
- The General Counsel and the Deputy General Counsel addressed Regional and Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them on their achievements, and seeking suggestions for Agency improvements.

Objective 1: Initiative 2:

- OHR and the Office of Equal Employment Opportunity (OEEEO) worked together on the Strategic Recruitment Committee and are developing a Strategic Recruitment Plan.
- OHR routinely partnered with the Local Veterans Employment Representative Program (LVER) to recruit for commonly filled positions, and placed at least five veterans through this program this fiscal year.
- The Agency regularly uses the Veteran’s Recruitment Appointment (VRA) Special Hiring Authority to place disabled veterans.
- OHR worked to bolster the integrity of its recruitment process and adherence to OPM regulations. It created a series of internal procedures and manuals that are used to correctly

navigate the process. It worked diligently with OPM to redraft its Excepted Service and Pathways policies to ensure that adequate consideration is provided to viable candidates. Furthermore, in direct correlation to OPM’s Hiring Reform and the 80-Day Hiring Model, OHR attained an average 74-day hiring rate from the beginning of the process to the on-boarding of the employee for FY 2015.

- OHR implemented a process for applicants with disabilities (Schedule A) which includes a specific mailbox for these applications, retention for 30 days, and focused review when a new vacancy arises in the Agency. If an applicant’s qualifications prove to be a match for the job, that information will be forwarded to the hiring manager for further consideration. Presently, applicants are made aware of the program through Agency vacancy announcements on USAJobs and OPM’s website.
- The Agency continued to utilize USAJobs in announcing vacancies to a broad category of applicants, including veterans and persons with disabilities.
- OHR entered into a Memorandum of Understanding with the Department of Veteran Affairs to participate in the “VA for Vets Program,” in order to process non-competitive hiring actions for veterans and to take part in the in “Feds for Vets” initiative.

Objective 2: Initiative 1:

- FPB continued its extensive Communication Plan to keep Headquarters staff informed on matters related to the relocation of the Headquarters facility.
- Following the move, FPB implemented a practice requiring FPB employees to courtesy copy all branch employees on building related requests to ensure that multiple staff are not working on the same task. This practice of sharing information has also resulted in staff feeling more included and aware of work matters transpiring within the branch.
- The Security Branch continued to issue its customer feedback questionnaire, soliciting information to ensure that customer assistance is timely and professional.
- OHR improved communications by distributing numerous documents and notifications via its Ask HR Program.
- The Agency analyzed the 2014 Federal Employee Viewpoint Survey results and is implementing best practices and strategies for strengthening employee engagement and organizational performance

through focused leadership and increased communication.

- In response to the Federal Employee Viewpoint Survey results from FY 2014, Agency managers developed action plans that included: greater transparency, sharing of information, and solicitation of employee input.
- Guidance information on Employee Viewpoint Survey (EVS) action planning, and best practices involving effective leadership, communication, and engagement, was posted to the Human Capital Planning internal web page.
- The Human Capital Planning Officer (HCPO) developed a structured communication plan to increase employees' awareness of the EVS. The response rate to the 2015 EVS increased by 15 percent and there was a 4 percent increase employee engagement scores and a 5 percent increase in global satisfaction scores.

Objective 2: Initiative 2:

- OHR met with incoming Honors Attorneys to seek their feedback on the onboarding process, and how it could be enhanced and improved.
- Training was provided to managers/supervisors on the appraisal process, including how to write performance appraisals, performance management requirements, and their role in communicating expectations to Agency employees on performance management protocols and processes. The training highlighted the importance of getting employees involved in creating their performance plans and having regular feedback discussions with employees.
- The Congressional and Public Affairs Office issued news releases on case successes.
- The General Counsel and the Deputy General Counsel addressed Headquarters staff in Divisions/Branches/Offices acknowledging and congratulating them in their achievements, and seeking suggestions for Agency improvements.
- Significant organizational accomplishments are also regularly highlighted to all staff in the Agency newsletter.

Objective 2: Initiative 3:

- OEEEO collaborated with OED and the Division of Operations-Management to design and implement a foundational and ongoing diversity and inclusion training program for all Agency employees in alignment with Executive Order 13583.
- OHR continues to provide training to Agency hiring managers on special hiring authorities, including Schedule A, in alignment with Executive Order 13548.
- The Management Directive "MD715" is an affirmative EEO program by which federal agencies can assess, identify deficiencies and conduct barrier analysis of obstacles to equal employment opportunity and develop ongoing action plans to correct the self-identified deficiencies and work collaboratively to remove identified barriers. The NLRB submitted its report in March 2015 to the EEOC.
- Agency SES Leadership participated in external diversity and inclusion training.
- OEEEO prepared four policy statements that were adopted and issued by Agency leadership on 1) Agency EEO Policy; 2) Statement on the Prevention of Unlawful Harassment; 3) Agency Statement Promoting Alternative Dispute Resolution; and 4) Diversity and Inclusion Policy Statement.
- OEEEO partnered with OHR to incorporate language describing specific standards for inclusion in supervisors' and managers' performance appraisals to measure management accountability on building and maintaining an inclusive work environment.
- The General Counsel's Mentoring Workgroup analyzed the Agency's existing mentoring program and made recommendations on how mentoring can be further developed as a tool to maintain a diverse workforce. In response to the General Counsel's request, the workgroup investigated mentoring models at other federal agencies and their best practices for implantation.
- OEEEO designated staff as Special Emphasis Program Managers (SEPMs) responsible for developing program initiatives that enhance employment opportunities for specific demographic populations and tools to support employee affinity groups.
- OEEEO supports programming initiatives for the Agency's cadre of collateral duty Special Emphasis Program coordinators.

FY 2015 Strategic Goal 4 (Support): Manage Agency Resources in a Manner That Instills Public Trust

Objective 1: Initiative 1:

Measure:

- The Agency completed the consolidation of its separate legacy case tracking systems into an enterprise case management solution, a success that is rare within the Federal government. The last remaining Agency Office, the Contempt, Compliance, and Special Litigation Branch, was migrated successfully into NxGen in September. NxGen was designed and implemented to replace 11 separate legacy systems and integrate them into a single unified solution that leverages multiple technologies. This was the most comprehensive technology project undertaken at the NLRB, and its success has been essential to the Agency's mission.

NxGen presently manages:

Internal users	1,350
Cases	286,117
Case Actions of the Agency	876,076
Documents, images, and videos, each linked to its Action and Case	6,050,259

Measure:

- In FY 2014, the Agency expanded its electronic distribution of case documents with an E-Delivery pilot involving six Regions, one party (USPS) and new 10 document types. In FY 2015, 781 documents were sent to the USPS electronically, resulting in notable savings to the NLRB and a great convenience to the USPS.
- On April 14, 2015, the Agency expanding its electronic filing program to enable constituents to E-File charges and petitions, the two initiating documents for the Agency's cases. The Agency has received 3,098 electronically filed charge and petitions from the launch of the new service through the end of the fiscal year. Over the course of the fiscal year, the Agency received 58,662 documents of all types through its E-filing program and electronically delivered 3,422 documents to nearly sixty-thousand parties.

Measure:

- The NLRB has counted millions of votes, investigated hundreds of thousands of ULP charges, and issued thousands of decisions. The numbers tell an important part of the Agency's story. Making what we do accessible to the public is an important part of the NLRB's mission. For example, the total number of case documents available for public access was 692,456, including Tally of Ballot information. This data is downloadable for analysis at <https://www.nlr.gov/news-outreach/graphs-data>.

Please see <http://www.nlr.gov/open/public-documents> for a complete list of the document types available to the public.

Objective 1: Initiative 2:

Measure:

- Through FY 2015, the Administrative Systems (AS) team actively sought to develop automated solutions to streamline Agency processes.
- The AS team completed a development effort to streamline the enrollment and management processes for the Voluntary Leave Bank. Dynamic reporting was also delivered to the managers and committee to provide aggregate statistics on many aspects of the system.
- The AS team also developed a workflow process for authoring, routing and editing, approving and publishing of documents. This repeatable process will allow groups of users to store documents centrally in a secure authoring library, allowing documents to be finalized and then published to a separate location for consumption by a larger audience.
- The AS team completed a development effort for OHR involving organizing and categorizing all positions and position descriptions (PDs) within the Agency, modifying the PD library, assisting the OHR team with the creation of a set of standardized PD, and developing a streamlined process for OHR and Agency supervisors / managers to update all PDs every three years.
- The AS team completed a development effort and migration of content and documents into a SharePoint site for all continuity of operations (COOP) members. Authors can now create, edit, route and receive approval for yearly COOP plans,

and all COOP documents are now available at any time and may be accessed remotely.

Measure:

- The Agency awarded its Unified Communications (UC) contract on September 24, 2014, and now expects the implementation to take up to 20 months. After the initial investments in the UC build-out and end-user equipment, the Agency expects total network services costs to be in line with the current separate allocations for data, voice and video networks, and anticipates the enhanced services to demonstrably improve administrative efficiencies.
- The first priorities were to upgrade networks in the Agency's Field Offices and two existing datacenters, and to add network connections to its two new voice datacenters and new Headquarters. These changes add significant bandwidth to the Field Offices, are based on a new, more modern networking technology, and provide greater redundancy to our critical infrastructure. Forty Field Offices are now live on the new network, as are the two existing datacenters, one of the new voice datacenters, and the Agency's Headquarters.
- All employees in Headquarters now use Skype for Business (SfB) for voice calls, voicemail and instant messaging, as the OCIO deployed the necessary Microsoft Office software and delivered over 775 new unified communications devices.
- OCIO and Operations Management are in the process of planning the SfB deployment to the Field Offices.

Measure:

- The AS team continued to build team sites, on request, for geographically dispersed employees to collaborate using Office Online applications, SharePoint lists and discussion forums. Enhanced capabilities continue to be added to allow for user-based filtering of content and more granular management of permissions for documents.
- The AS team completed a development effort for OHR, creating an "Ask HR" knowledge base, which consists of answers to common questions, and if no information is present, a workflow capability will allow a new question to be submitted, routed, and ultimately, become part of the knowledge base.

- The AS team also completed a development effort for the Office of the Chief Financial Officer (OCFO), creating an "Ask the CFO" knowledgebase, which consists of information related to the Acquisitions Management, Finance and Budget branches.

Objective 1: Initiative 3:

Measure:

- Required reports to external regulatory bodies were prepared in accordance with established time lines.

Measure:

- OCFO held monthly meetings with Contracting Officers and Contracting Officer Representatives (COR's) to discuss unliquidated obligation amounts, monitor burn rates, and request funding increases and deobligations.

Measure:

- OCFO continued to develop a formalized annual training plan for all allowance holders. During FY 2015, finance-related training was incorporated during the monthly obligation monitoring meetings, to include COR's who recently on-boarded with the Agency.

Measure:

- The Finance Branch hosted a training session for CORs and provided a tracking tool to enable increased accuracy and timeliness of reporting burn rates, unliquidated obligation amounts, request for increased funding, and request for de-obligation of funding.
- The Budget Branch worked closely with the program offices and senior leadership to develop a detailed budget spend plan, which is a living document of estimates and actual amounts and is updated monthly on the prior months execution.
- The Budget Branch has developed several tools for various budget execution line items to monitor timely obligation and liquidation of funds, such as monitoring GSA rent charges, individual training requests, and mass transit benefit funding levels. Some budget lines have demonstrated variable spending cycles during the year, which requires additional training to program managers on the importance of monitoring those cycles to ensure funding requests cover the requirements.

Measure:

- The Acquisitions Management Branch (AMB) provided training to Purchase Card Holders regarding electronic submission of monthly statements, and provided guidance on purchase card user registration via the Citibank portal.
- AMB also provided monthly and quarterly reports to the Associate General Counsel of Operations-Management, which provided greater insight and transparency on purchasing habits of field offices that it oversees.

Measure:

- The NLRB has increased the percentage of contracts awarded woman-owned and small disadvantaged business categories. With AMB's focus on small businesses as the suppliers of choice, continuing to increase the number of awards to small businesses is achievable.

Objective 2: Initiative 1:
Management Strategies:
Immigration Population

- The Agency met with local consulates of various countries to educate consular officials about the NLRB's protections and processes.
- The Agency provided direct outreach to immigrant populations by:
 - Participating in Labor Rights Week activities
 - Speaking in Spanish and other languages at events organized by the consulates or other community groups to educate the public about the rights afforded under the NLRA
 - Holding news conferences to disseminate information helpful to immigrant communities
 - Participating in interviews on Spanish-language radio stations
 - Staffing phone banks to respond to inquiries from immigrant populations
 - Staffing booths at informational fairs
 - Responding to inquiries from individuals who seek consular services
- The Agency has joined with other federal agencies to educate the public by:
 - participating in the Vulnerable Workers Project
 - participating in numerous "listening sessions" with those from the Asian American and Pacific Islanders Community

■ Other Agency activities include:

- meeting with foreign labor and business representatives to provide information about employee rights under the NLRA and NLRB processes
- meeting with members of the Commission on Human Relations to provide an overview of NLRA rights
- making presentations about the NLRA to officials of the French, Colombian, Spanish, and German embassies
- speaking at naturalization ceremonies to new citizens from approximately 35 countries about rights they have under U.S. labor laws

Youth

- The Agency led discussions for high school and middle school classes in English and Spanish concerning the development of the NLRA and the New Deal, as well as the workers' statutory rights and the Board processes.
- The Agency held mock trials for schools to demonstrate how an ULP trial is conducted.
- The Agency engaged in the Workplace Street Law Project in Washington, DC, which educates high school students about their rights as workers.
- The Agency signed an MOU with the Ministry of Foreign Affairs of the Republic of Colombia. Various Regional Offices also held local signing ceremonies with local Colombian consulates, with follow-up outreach sessions.
- The Agency partnered with DHS, DOL (WHD, OSHA and OFCCP), OSC, DOJ and EEOC in an Interagency Working Group for the Consistent Enforcement of Federal Labor, Employment and Immigration Laws.
- The Agency presented at the national EEOC EXCEL Conference in Washington, DC, on concerted activity in social media
- DOJ's Office of Special Counsel hosted two webinars for NLRB field personnel to covering the intersection of the NLRA and immigration law.
- Internal Agency deliberations occurred concerning effective outreach methods, including targeting specific audiences through the use of twitter, YouTube, Facebook, and news aggregators.
 - Since its release in August 2013, the NLRB app has been downloaded 19,296 times

- The Agency implemented a Sharepoint site available to all of its outreach officers. This site includes a centralized area for collecting outreach presentation materials and a discussion board for addressing outreach inquiries
 - The Agency maintains a link on its public website for outreach requests, which are routed to the appropriate Region
 - The Agency has inserted QR codes in its correspondence to direct the public to our website.
 - More Regional Offices are considering producing newsletters in electronic format for delivery through GovDelivery
- Outreach sessions for veterans and employee advocate organizations were held explaining Protective Concerted Activity, in particular.

Objective 3: Initiative 1:

Measure:

- The NLRB requires all Public Financial Disclosure filers, who are the leadership of the Agency (SES and PAS), to complete our annual ethics briefing. This year's briefing served as a reminder to our leadership of all the available ethics training products.
- The "Braking Bad Email Habits" training series emphasized that Agency employees should use their government email in a way that complies with government and legal ethics rules, and avoids the disclosure of confidential case-related information. A related memo was sent to all field professionals to encourage those that had not yet reviewed the material to do so as it was an effective learning tool.
- The Ethics Office provided general ethics guidance to Board Members regarding the use of private social media accounts while serving as a Member of the Board, and met with the Deputy General Counsel, the Chief of Staff to the Chairman, and others to offer guidance in identifying potential conflicts of interest in an administrative program.
- At the request of the General Counsel, the Ethics Office developed and delivered a training session on Civility during the Attorney Trial Training and presented a similar session to Headquarters staff.
- The Ethics Office helped establish a reporting process that would ensure that newly hired and newly promoted employees receive required ethics training and complete required financial disclosure reports (as appropriate) in a timely manner.

Measure:

The Ethics Office continued to seek out opportunities to educate Agency employees about their ethical obligations.

During FY 2015 the following was provided:

- A conclusion to the "Braking Bad Email Habits" series that covered the ethical use of government email.
- A Skip Counsel and Attorney-Client Privilege training program was presented to nine Regional Offices.
- Monthly distribution of the "On the Road with the Ethics Code" Job Aids that provide timely legal ethics information to all board agents.
- Monthly Agency newsletter articles. These articles covered, where to find government and legal ethics information on the Agency website, how to navigate gift giving during the holiday season, and provided real-life examples of the consequences of violating criminal conflict of interest statutes.
- Ethics social media guidance for distribution to the Presidential Appointees.
- The redistribution of a Hatch Act job aid to serve as a reminder about partisan political activity.
- Presented legal ethics topics at two attorney conferences co-sponsored by the NLRB and assisted in planning the ethics programming for a conference.
- Provided ethics briefings to newly appointed Regional Directors.
- Distributed one-page Job Aid covering Seeking Other Employment.
- Partnered with the OED to begin development of two legal ethics training programs for online/on-demand distribution to all legal professionals.
- Developed and presented a training session on Civility. This program was offered to attendees at the Trial Training in August and to professionals in Enforcement Litigation, CCSLB, and the Washington Resident Office.
- Provided guidance to the General Counsel and Board Members regarding speaking events where certain topics may create an appearance issue for the Agency or lead to discussion that could put the speaker at risk of making comments that could be construed as "prejudging" a case, and lead to requests for recusal.

Measure:

- As of September 30, 2015, the Ethics staff received 622 inquiries and 87.7 percent were resolved within 5 business days.

Measure:

- As of September 30, 2015, 100 percent of the financial disclosure reports submitted were reviewed within the 60-day regulatory time period. Where a reviewer identified either a potential or actual conflict of interest, a memo was prepared and sent to the filer providing ethics advice and guidance.

Measure:

- Ethics staff rolled out the Office of Government Ethics (OGE) electronic filing system to all filers of the OGE 278. This included:
 - Meeting with OGE project managers
 - Attending user and administrator training sessions
 - Completing systems and user testing to ensure that NLRB employees would be able to use the system via the NLRB network and agency provided laptops
 - Finalization of NLRB Filer training materials to include: job aids, user guide, demonstration videos, and online training module
 - Creation of 278e Integrity web page on the NLRB Insider where all training materials are archived
 - Live training sessions on how to file your 278e in Integrity for the first time

Objective 3: Initiative 2:

- The OCIO responded timely to internal audits and information requests including:
 - Audit of the NLRB Fiscal Year Financial Statements
 - Fiscal Year 2014 Review of Internal Controls (FMFIA Survey)
- The OCFO submitted timely Corrective Action Plans as required in response to the Fiscal Year 2014 Financial Statement Audit and also timely prepared a corrective action plan for OIG Travel Audit OIG-AMR-75-15-02. The actions that were taken and submitted to remediate recommendations found in Audit OIG-AMR-65-11-03 "Purchase Cards" were reviewed by the OIG.

Objective 3: Initiative 3:

The OCIO responded timely to external information requests including:

- Questions posed in the Office of Management and Budget Memorandum M-15-01, Fiscal Year 2014-2015 Guidance on Improving Federal Information Security and Privacy Management Practices
- Exhibit 53 and the corresponding Information Technology section for the Congressional Budget Justification
- NARA's 2014 Records Management Self-Assessment
- FY 15 Q1 Federal Information Security Management Act (FISMA) Data Call
- Trusted Internet Connection (TIC) POA&M February 2014 Data Call
- FY 15 Q2 Federal Information Security Management Act (FISMA) Data Call
- Multiple security- and privacy-related ad hoc data calls, including for MS15-011 software "bug" and Indicators of Compromise (IOCs) related to OPM's personnel systems data breach.

Objective 3: Initiative 4:**Measure:**

- Based on the information in the FOIA Tracking System, the Agency responded to initial FOIA requests on an average of fourteen days for requests received from October 1, 2014 to September 30, 2015. The Agency received 4,644 requests for this period and responded to 3,543 of those requests in 1-20 days. Thus, 78.34 percent of the FOIA requests were processed within the 20-day statutory time period.

Measure:

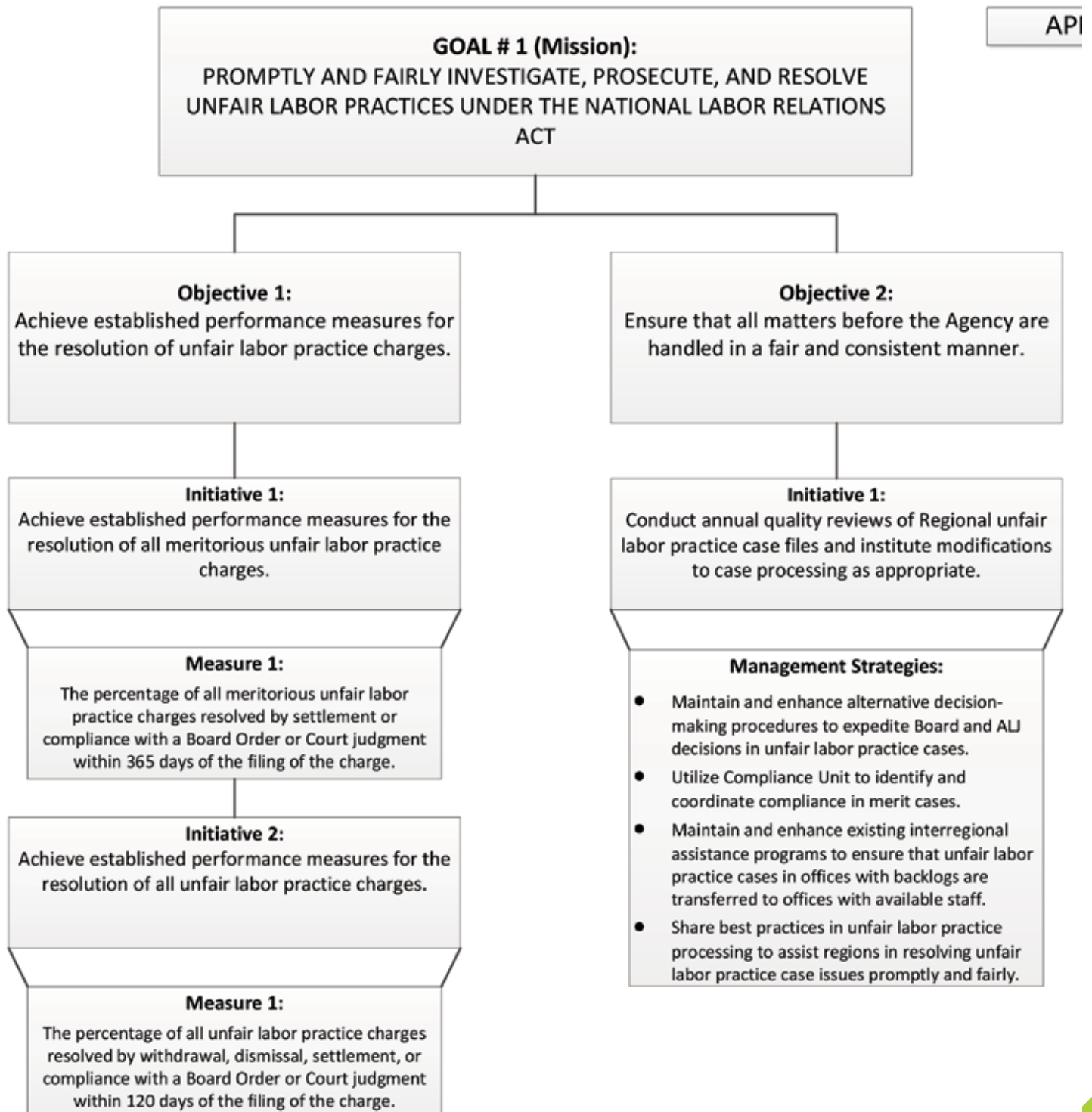
- The Agency sought an extension of time to process a request beyond the 20-day period in about 20 percent of the FOIA requests received during the fiscal year.

Measure:

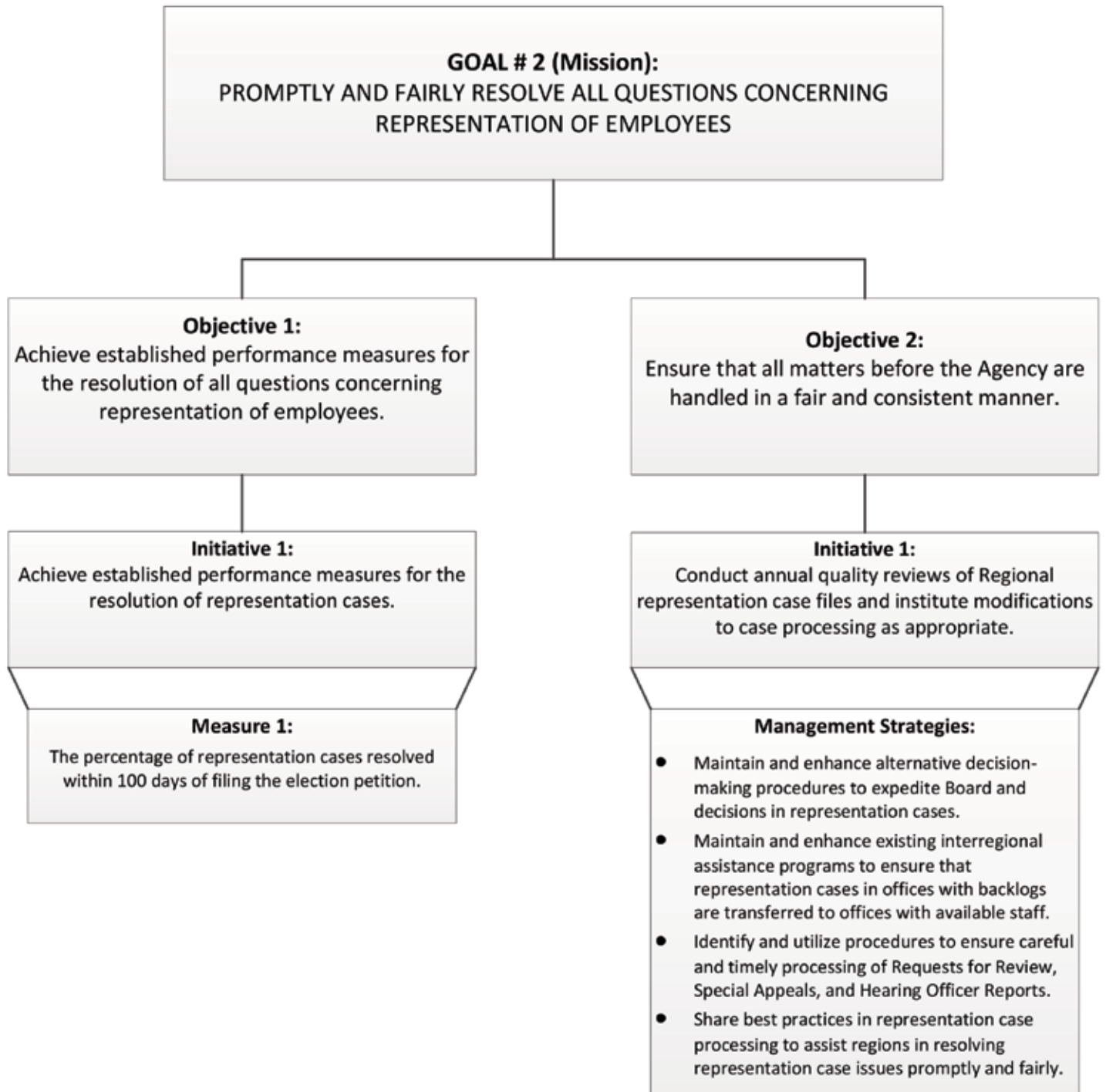
- The Agency received 24 FOIA Appeals from October 1, 2014 to September 30, 2015. The average elapsed days to process the appeal was 24 business days.

APPENDIX D – GOAL STRUCTURE

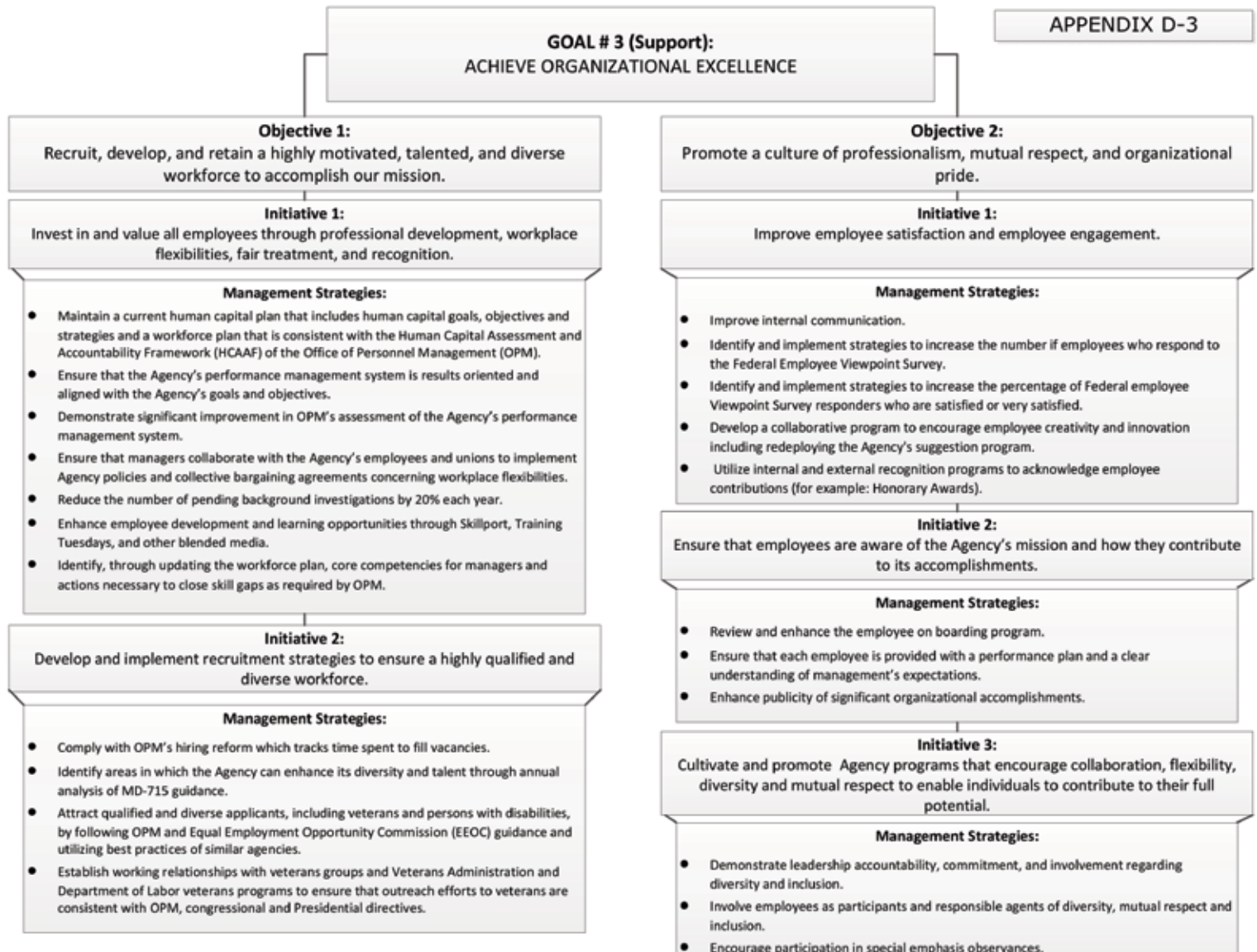
APPENDIX D-1



APPENDIX D-2



APPENDIX D-3



APPENDIX D-4

GOAL # 4 (Support):
MANAGE AGENCY RESOURCES IN A MANNER THAT INSTILLS PUBLIC TRUST

APPENDIX D-4

Objective 1:

Use information and technology to monitor, evaluate, and improve programs and processes in order to accomplish the Agency's mission and increase transparency.

Initiative 1:

Improve the productivity of the Agency's case management by standardizing business processes in a single unified case management system.

Measures:

- Complete the deployment of the Next Generation Case Management System (NxGen), replacing 11 separate legacy systems, to all Agency mission offices during FY 2015.
- Increase the rates of electronic service, delivery, and filings, thereby reducing the paperwork burden on constituents, including individuals, labor unions, businesses, government entities and other organizations.
- Increase the information shared electronically with the public, making the Agency's case processes more transparent.

Management Strategies:

- Focus on critical business needs first.
- Split projects into smaller, simpler segments with clear deliverables.
- Ongoing, transparent project oversight from the NxGen Integrated Project Team.

Initiative 2:

Achieve more effective and efficient program operations in the NLRB administrative functions by automating and improving processes and information sharing within the Agency.

Measures:

- Streamline the Agency transactional processes by providing employees ready access to the tools, data and documents they require from anywhere, at any time.
- Create a modern single unified communications platform and network to empower Agency personnel to communicate with voice, video and data from all locations including the office, at home and on the road by FY 2016.
- Create a dynamic social collaborative environment for employee engagement.

Management Strategies:

- Focus on critical business needs first.
- Split projects into smaller, simpler segments with clear deliverables.
- Increase information sharing within the Agency through mechanism that are easy for employees to contribute to and access.
- Employ ongoing, transparent project oversight from the NxGen Integrated Project Team.

Objective 2:

Evaluate and improve the Agency's Outreach Program.

Initiative 1:

Enhance the Agency's outreach program.

Management Strategies:

- Employ further non-traditional outreach to the following populations:
 - Immigration Population
 - Youth
- Engage with organizations, such as those listed below, to better educate workers and employers:
 - Letter of Agreement (LOA) with embassies
 - Joint outreach with sister agencies
 - Memorandums of Understanding (MOU) with other Agencies related to co-extensive investigations
- Focus on Protected Concerted Activity vs. Union Activity
 - Expanded usage of the NLRB's social network
 - Additional information on NLRB public website
 - Broader use of NLRB Smartphone app and other technology
 - Use of internet technology, such as YouTube
 - Development and internal posting of more informational materials for use by board agents at recruitment and outreach events

Initiative 3:

Effective management of fiscal resources.

Measures:

- Produce financial reports as required by OMB, Treasury, and Congress.
- Conduct annual training of allowance holders.
- Conduct training for new allowance holders within 90 days of on boarding.
- Increase transparency in enterprise financial reporting.
- Increase use of strategic sourcing, purchase card program, and in sourcing to minimize waste and abuse.
- Increase number of awards given to minority business enterprises.

Objective 3:

Conduct all internal and external Agency business in an ethical and timely manner.

Initiative 1:

Promote an ethical culture within the NLRB through leadership, awareness, resources, and oversight.

Measures:

- Involve Agency leadership promoting visibility of NLRB ethics program.
- Increase employee awareness of ethics responsibilities by maintaining an education program that reaches all NLRB employees at all levels.
- Respond to 85% of ethics inquiries within 5 days of receipt.
- Review and certify financial disclosure reports within 60 days of receipt and notify filers of real or potential conflicts.
- Use technology to improve financial disclosure reporting and review process.

Initiative 2:

Respond to internal audits in a timely manner.

Measure 1:

Prepare responses to internal audit reports as required by the auditor, meeting the deadlines specified in the reports.

Initiative 3:

Respond to external audits in a timely manner.

Measure 1:

Prepare responses to external audit reports as required by the auditor, meeting the deadlines specified in the reports.

Initiative 4:

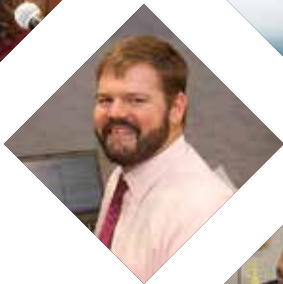
Respond to FOIA and other public inquiries in a timely manner.

Measures:

- Respond to initial FOIA requests within 20 working days.
- Seek a statutory extension for less than 15% of requests.
- Respond to statutory appeals within 20 working days.



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